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CONCISE PRECEDENTS
IN
MODERN CONVEYANCING,

WITH
PRACTICAL AND EXPLANATORY NOTES.

BY
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"THE NEW STAMP ACT," &c.

VOL. I.

256171
6. 7. 31

SECOND EDITION.

LONDON:
LAW TIMES OFFICE, 29, ESSEX STREET, STRAND,
AND
HODGES AND SMITH, DUBLIN.

1855.

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No.	PAGE
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CONCISE PRECEDENTS

IN

MODERN CONVEYANCING.

PART I.

CONDITIONS OF SALE AND CONTRACTS.

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PART I.

CONDITIONS OF SALE AND CONTRACTS.

No. I.

CONDITIONS OF SALE OF FREEHOLD PREMISES.

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| 1. That the highest bidder shall be the purchaser. | 7. Purchaser to take timber at a valuation. |
| 2. That purchaser shall pay a deposit. | 8. That mistake in description shall not annul sale. |
| 3. Vendor to deliver abstract. | 9. Purchaser, on failing to comply with conditions, will forfeit his deposit, and vendor to be at liberty to re-sell the estate. |
| 4. Vendor to bear expense of disentailing deeds, &c. | 10. Short form of contract to purchase to be annexed to conditions. |
| 5. Power for vendor to annul sale in case purchaser objects to title. | |
| 6. Vendor to convey premises on payment of purchase-money. | |
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CONDITIONS OF AN AUCTION, held on the day of 18 ,
at the Bell Inn, in the parish of L—, in the county of
Devon, by Mr. D. A. W. (licensed auctioneer), for selling on
behalf of (*vendor*), Esq, the fee-simple of (*parcels*), situate in
L— aforesaid.

Highest bidder
to be the pur-
chaser.

1. That the highest bidder shall be the purchaser; that no person shall advance less than £ at any bidding, or retract his or her bidding; and if any dispute shall arise between the bidders, the premises shall be put up again at the last bidding.

That purchaser

2. That the purchaser shall, immediately upon the lot being

knocked down to him, pay to Mr. A. B., the vendor's agent, a deposit at the rate of 15*l.* per cent., and sign an agreement to pay the rest of the purchase-money on the day of next, at the offices of the said A. B., at C——, at which time the purchase is to be completed.(a)

No. 1.
—
Conditions of
Sale of Freehold
Premises.
—
shall pay a
deposit.

3. That the vendor will, within one calendar month from the day of sale, at his own expense, deliver to the purchaser or his solicitor, an abstract of title of the said premises,(b) and deduce a good and unincumbered title thereto; and the purchaser shall, within twenty-one days next after the delivery of such abstract, signify in writing to the vendor or his solicitor, his objections or

Vendor to
deliver abstract.

(a) To this clause is often superadded a provision that in case the sale should not be completed at the appointed time, the purchaser shall pay interest; it usually runs as follows:—

“But if the completion of the purchase shall be delayed by any cause whatever beyond the said day of the respective purchasers in respect of whose lots any such delay shall occur, shall pay interest at the rate of £ for every 100*l.* by the year from that day.”

That in case of
delay in com-
pleting pur-
chase, vendee
shall pay
interest.

To this clause is often superadded a further proviso in the following terms:—

“Provided that this clause shall not be construed to give to any purchaser a right of entry on any lot or lots until actual payment of his purchase-money.”

Proviso that
payment of
interest shall
not give pur-
chaser any right
of entry.

(b) It is always proper to stipulate that the abstract shall be delivered at some specified time. In the absence of this, it must be delivered within a reasonable time; but what limit is to be so considered is a matter involved in considerable doubt. In case, therefore, no time is mentioned, the vendor's solicitor must use due diligence in forwarding the abstract; for a delay on his part will afford a pretext for the same line of conduct on the part of the purchaser, and thus cause delay and inconvenience. But, as on the one hand the vendor's solicitor should be careful to deliver an abstract at the appointed, or within a reasonable time, so, on the other hand, the purchaser's solicitor must be equally active, and when a time is appointed for the delivery, the latter should make a point of demanding it on or before the time. It is not solely incumbent on the vendor to move by making a tender of the abstract; something also is incumbent on the purchaser to ask for it (*Guest v. Homfray*, 5 Ves. 283); and any laches on the part of the latter to do this, may afford sufficient ground for rescinding the contract; and even where no time is appointed for the delivery, the latter should make a point of demanding it on or before the time. (1 Hughes. Pract. Sales, 209.)

Propriety of
stipulating as
to the time of
the delivery of
the abstract.

No. I.

Conditions of
Sale of Freehold
Premises.

Vendor to bear
the expense of
disentailing
deeds, &c.

requisitions to the title, if any, and in default of so doing, shall be considered to have accepted the title unconditionally.(c)

4. That the vendor shall bear the expense of all disentailing deeds, as also any acknowledgments of married women that may be necessary for perfecting the title; but the expense of the conveyance, assignment, or surrender of any outstanding estate,

(c) In case there is any reasonable ground for apprehending that the vendor may be unable to confer a good title, the following clause should be next inserted instead of clause 5, *infra* :—

Clause empow-
ering vendor to
rescind sale in
case purchaser
shall object to
title.

“That in case the purchaser or purchasers, or their, his, or her solicitor, shall object to the title in manner above provided, the vendor shall be at liberty, if he shall think fit, by notice in writing under his hand, to vacate the sale, and thereupon such sale shall be absolutely null and void, to all intents and purposes whatsoever; and the purchaser shall be repaid his deposit-money, but without interest, and all reasonable expenses sustained by him in respect of such sale; and each contracting party shall be placed in the same situation as if no agreement had ever been made, unless the purchaser shall, within fourteen days next after the receipt of such notice from the vendor, agree to accept the title unconditionally; and such right of the vendor to annul the sale as aforesaid shall not be considered as waived, or in any manner affected by any negotiation as to such objection or requisition, or attempt to obviate such objection, or to comply with such requisition, or to remedy any defect that may be objected to.”

Right of vendor
to annul sale
not to be con-
sidered as waived
by subsequent
negotiation.

Practical
observations.

The object of the latter part of this clause is to prevent any subsequent negotiation from depriving the vendor of his right to annul the sale, for, it seems, if he were to attempt to answer any objections or requisitions made by the purchaser, he would thereby be considered to have waived his right to rescind the contract. It seems, however, from the suggestion thrown out by Wigram, V.-C., in the recent case of *Thorley v. Cook* (12 L. J. 136), that the vendor might protect himself by answering the objection under express protest that it was to be without prejudice to the vendor's right of rescinding the contract, in pursuance of the terms of the condition; and there is no doubt the same end may be attained by inserting the clause as above stated.

Propriety of
stipulating as
to the time the
title shall com-
mence.

It is often advantageous also to stipulate at what time the title shall commence, and to provide at the same time that the purchaser shall not be entitled to make any objection to the earlier title; and also that the vendor shall not be responsible for any defects in the earlier title which may be discovered, although such earlier title may be recited or mentioned in any subsequent deed or instrument; for, without a stipulation to this effect, it seems that a condition restraining a purchaser from requiring the production of the title anterior to a certain period or event, does not preclude him from seeking out *aliunde*, and showing, an actual defect in such anterior title (*Shepherd v. Kentley*, 1 C. M. & R. 117; S. C., 4 Tyrw. 571; *Edwards v. Leary*, Coop. 308; *Hyde v. Dallaway*, 1 Beav.

term, or interest, or of obtaining any probate or letters of administration shall be borne by the purchaser; as also the expense of comparing title deeds and other documents, and also of all attested and other copies,(d) and covenants for the production of title deeds;(e) and the recitals of descents, births, marriages, deaths, payments of money, heirships, intestacies, devises, vesting of terms, and other facts contained in deeds, court-rolls, or wills of twenty years old, and upwards, shall be deemed sufficient evidence of the facts and documents therein recited.

No. I.
—
Conditions of
Sale of Freehold
Premises.
—

5. That in case the purchaser shall object to the title, the vendor shall be at liberty to annul the sale on returning the deposit to the purchaser without interest,(f) and paying all reasonable expenses incurred by the purchaser in respect of such contract.

Power for
vendor to annul
sale in case pur-
chaser objects
to title.

606; *Flower v. Hartop*, 7 Jur. 613; *Dick v. Donald*, 1 Bligh, 655; *Southby v. Hutt*, 2 Myl. & Cr. 207; *Sellick v. Trevor*, 11 Mees. & Wells. 724.) The following clause may be found useful under the circumstances above alluded to:—

“That the title shall commence with certain indentures, &c., and the vendor shall not be required to produce any earlier title; neither shall the purchaser be permitted to take any objection to the earlier title, nor shall the vendor be held responsible for any defects in the earlier title; and this, notwithstanding such earlier title may be recited or mentioned in any subsequent deed or instrument.”

(d) The above clause should never be omitted unless the vendor chooses to be at the expense of furnishing the purchaser with attested copies, which in the absence of an express stipulation to that effect he will be compelled to do whenever he sells landed property, and retains any of the deeds relating to it. An omission of a clause to the above effect, where the title deeds are numerous and the property is sold in small lots, might often put the vendor to very heavy expense; an instance indeed once occurred (*Bird v. Le Fevre*, 6 Ves. 460, n. (a).) where, in the absence of a provision of this kind an estate having been sold in 200 lots, it cost the vendor 2,000*l.* to furnish the various purchasers with the attested copies, which they insisted, as they clearly have a right to do, upon being supplied with. See also *Berry v. Young*, 2 Esp. N. P. C. 640 n. (n); *Dare v. Tucker*, 6 Ves. 460; *Boughton v. Jewell*, 15 *ib.* 176; *Barclay v. Raine*, 1 Sim. & Stu. 449; 1 *Hughes Pract. Sales*, 6, 2nd edit.)

In the absence
of a stipulation
to the contrary,
vendor retaining
title deeds is
bound to supply
attested copies
at his own
expense.

(e) This clause is a very important one for vendors; for, if omitted, most, if not the whole, of these expenses would fall upon their shoulders: (*Boughton v. Jewell*, 15 Ves. 176; *Hughes v. Wynne*, 8 Sim. 85; *Southby v. Hutt*, 2 Myl. & Cr. 207.)

Usual practice
for purchaser's
solicitor to pre-
pare purchase
deed.

(f) If the vendor intends the purchaser shall be at the expense of the investigation of the title under the above circumstances, substitute

“And the expenses (if any), incurred in investigating the title, shall be also borne by the purchaser.”

No. I.

Conditions of
Sale of Freehold
Premises.

Vendor to con-
vey premises on
payment of pur-
chase-money.

6. That upon payment of the purchase-money at the time hereinbefore appointed, the vendor and all necessary parties will convey the premises to the purchaser; the purchaser at his own expense to prepare and tender the conveyance to the vendor and other necessary parties for execution; but the expenses of the execution to be borne by the vendor.(g)

Purchaser to
take timber at
a valuation.

7. That the purchaser shall take at a fair valuation all timber, trees, standells, tellors, and pollards, as well of oak, elm, beech, fir, sycamore, as of every other description whatsoever; and although not strictly considered timber, according to the custom of the country (except apple and other fruit trees) now growing on the premises, down to the value of one shilling a stick, inclusive;(h) and in case of any disagreement, the value shall be fixed by the award of two referees, one to be chosen by the vendor, and the other by the purchaser; and if such referees cannot agree, they are to call in an umpire, whose decision shall be final; and in case either party shall refuse to name a referee, the referee of the other party may proceed alone, and his determination shall be conclusive on all parties.

Impropriety of
employing same
solicitor for both
parties.

(g) The above clause is only explanatory of the usual practice of the profession throughout most parts of the kingdom. In the county of Cornwall, however, a different rule prevails, for the practice there usually is for the vendor's solicitor to prepare the conveyance, but for which the purchaser pays. This course of proceeding is however attended with a risk few purchasers are aware of. By permitting the vendor's agent to prepare the conveyance, the purchasers adopt him as their own agent; the consequence of which is, that they will be affected by notice of all incumbrances affecting the property to which he is privy — notice to the agent being viewed in the eye of the law in the same light as notice to the principal himself; and thus the latter will lose the benefit of the equitable protection afforded to purchasers without notice, in every case in which the vendor's solicitor is cognizant of any incumbrance: (*Brotherton v. Hatt*, 2 Vern. 754; *Jackson's case*, Lane, 607; *Winged v. Lefebury*, 1 Eq. Cas. Abr. 32; *Newstead v. Searles*, 1 Atk. 265; *Brooke v. Bulkley*, 2 Ves. sen. 408; *Ashlie v. Baillie*, *ib.* 368; *Verney v. Cording*, *ib.* 345; *Crofton v. Ormsby*, 2 *ib.* 583; *Dunbar v. Frederick*, 2 Ball & B. 304; *Tunstall v. Trappes*, 3 Sim. 301.) Nor is this the only objection to employing the vendor's solicitor; for if the vendor were to be guilty of any fraud in the conduct of the sale to which the attorney was privy, the purchaser, notwithstanding his ignorance of the transaction, will, nevertheless, be bound by it: (*Bowles v. Stewart*, 1 Sch. & Lef. 227; see also *Doe v. Martin*, 4 T. R. 39; *Hicks v. Morant*, You. & Jer. 286; 1 *Hughes Pract. Sales*, 40, 2nd edit.)

Propriety of
stating what
trees are to be
considered as
timber.

(h) It is always advisable to state what trees are to be considered as timber; for notwithstanding that a general agreement to pay for timber would comprehend trees not strictly such, if so considered according to the custom of the country, as beeches in Buckinghamshire for instance (*Duke of Chandos v. Talbot*, 2 P.

8. The number of acres are believed to be correctly stated, but are not warranted to be so; but should any error appear to have been made therein to the prejudice of the purchaser, or any error in the description of the property, or of the vendor's interest therein, such error shall not annul the sale, but the purchaser shall accept such compensation as shall be fixed by the award of two referees, or their umpire chosen as aforesaid.(i)

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Conditions of
Sale of Freehold
Premises.
That mistake in
description shall
not annul sale.

9. Lastly, that if the purchaser shall fail to comply with the above conditions his deposit shall be absolutely forfeited to the vendor, who shall immediately thereupon be at liberty to re-sell the estate in any way he may think proper; and any deficiency he may incur by such second sale, together with all incidental expenses, shall be borne by the defaulter at this present sale,

Purchaser, on
failing to com-
ply with condi-
tions, will forfeit
his deposit, and
vendor be at
liberty to re-sell
the estate.

Wms. 601; *Rabbit v. Raikes*, Woodf. Land. and Ten. 224; *Aubrey v. Fisher*, 10 East, 446), yet, as a proof of a custom of this kind may sometimes be attended with difficulty, and still oftener occasions disputes, it will be always prudent to avoid both by enumerating what description of trees are to be treated as timber.

(i) A clause of this kind will not afford a vendor any protection against wilful misrepresentation; its proper object being to guard against unintentional errors, and such as may easily admit of compensation: (*Duke of Norfolk v. Worthy*, 1 Campb. P. C. 337; *Fenton v. Brown*, 14 Ves. 146; *Stewart v. Alliston*, 1 Mer. 26; *Trower v. Newcombe*, 3 ib. 704; 1 Hughes Pract. Sales, 38, 2nd edit.)

Clause against
misrepresenta-
tion will only
guard against
unintentional
errors.

In case it is probable that a good title cannot be made to some part of the property, or to some of the lots, or to a portion of them, the following clause will prove useful:—

“That if it should appear that a good title cannot be made to some of the lots, or to some part of the lands comprised in any lot or lots, this shall not annul the sale in respect of any other lot or lots, or of the other part of any lot or lots, to some portion of which a good title cannot be made: but the contract shall be carried into effect as to the residue of the lots, or property comprised in such lot or lots, to some portion of which a good title cannot be made, and a proportionable reduction made in the purchase-money to be fixed by two referees, or their umpire, chosen as aforesaid, whose decision shall be final and conclusive on all parties.”

Defect in title
in part of the
lands, not to
annul the rest.

It seems formerly to have been doubted whether, when an estate was sold in lots, to some of which no title could be made, a purchaser of the whole would

Whether, when
an estate is sold

No. I.

*Conditions of
Sale of Freehold
Premises.*

which, in case of non-payment, may be recoverable by the vendor as liquidated damages, without his tendering any previous conveyance to the purchaser.

Short form of
contract to be
annexed to con-
ditions.

10. I (*purchaser*), of C—, in the county of D—, Esq., hereby acknowledge that I have this day become the purchaser of the above-mentioned premises, at the price of £ , part of which I have paid to A. B., the agent of the said (*vendor*), by way of

in lots, to some
of which no title
can be made,
purchaser can
be compelled to
accept the
residue with
compensation.

not be compelled to accept those to which a title can be made, with compensation; but it seems now to be settled, that where property is sold in lots, and no title can be made to a lot complicated with the rest, and essential to its enjoyment, as where a contract is for a house and wharf, and no title can be made to the latter, or a mansion house is sold in one lot, and farms, &c., in other lots, and no title can be made to the mansion, the purchaser would not be compelled to take the remaining lots to which a marketable title can be made, with a compensation for the remaining property: (*Stapleton v. Scott*, 13 Ves. 427; *Knatchbull v. Gruebar*, 1 Mod. Rep. 153; 1 Hughes Pract. Sales, 24, 2nd edit.)

In case also the subject matter of sale consists of freehold and copyhold lands, intermixed with each other, it will be advisable to stipulate as follows, viz. :—

Compensation
for mistakes in
relative propor-
tions of freehold
and copyhold
lands, to be
settled by arbi-
tration.

“That if any mistake shall arise in the relative proportions of the freehold, or copyhold, or customary lands, or any other mistake or error shall appear in the particulars, such mistake or error shall not annul the sale, but a compensation shall be made or taken, as the case may require, to be fixed by two referees, &c. (*ut sup.*)

When the title deeds are to be retained by the vendor, it should be provided as follows :—

Vendor to retain
title deeds upon
entering into
covenant for
their production.

“That such of the title deeds, writings, and muniments of title, relating to the said premises, as shall relate also to other property of the vendor of equal or greater value, shall be retained by him on his entering into the usual covenant to be prepared at his own expense to produce the original; but such covenant shall become void if the vendor shall afterwards sell the premises retained by him, or any portion of the same, and deliver the said deeds, writings, and muniments of title to the purchaser thereof, and procure such purchaser to enter into the same or the like covenants.”

If the title deeds are to be delivered over to the largest purchaser in amount, then substitute for the above :—

Stipulation that

“That the purchaser of the largest amount in value shall be

deposit, and £ , the remainder, I agree to pay at the time and place appointed by these conditions; and I, the said A. B., as agent for the said (*vendor*), also admit that I have received the said sum of £ by way of deposit; and do further agree in all other respects to fulfil the same conditions. As witness our hands this day of , 18 .

No. I.
—
Conditions of
Sale of Freehold
Premises.
—

(*Purchaser*)

A. B., as agent to (*k*) (*vendor*.)

WITNESS :

entitled to the title deeds, which are to be delivered over to him on the completion of the purchase, upon his entering into the usual covenant for their production; but any purchaser, upon the completion of his purchase, shall be entitled, at his own expense, to attested copies of all or any of such deeds, but no part of such expense is to be borne by the vendor.”

purchaser of
largest amount
in value shall
have the title
deeds.

(*k*) Wherever an agreement is signed by an agent of either party, he should state that he signs as such agent, on behalf of his principal; for where he signs in his own name, he renders himself personally bound; a rule that has been carried so far, that it has been holden that even where an agent executed a covenant in his own name, for himself, his heirs, &c., he became personally bound, notwithstanding he was described in the body of the instrument as covenanting for himself on behalf of his principals: (*Appleton v. Binks*, 5 East, 148; *Kendry v. Hodson*, 4 Esp. N. P. C. 228; *Norton v. Herron*, 2 Ry. & Mood. 229; *Spittle v. Lavender*, Moore, 270; *Grey v. Gutteridge*, 1 Man. & Ry. 614; *Pell v. Stephens*, 2 Myl. & Kee. 334; *Gaby v. Driver*, 2 You. & Jerv. 549; *Jones v. Littledale*, 6 Ad. & Ell. 48; *Magee v. Atkinson*, 2 Mees. & Wels. 440; 1 Hughes Pract. Sales, 49, 2nd ed.)

Where party
signs as agent
it should be so
stated.

No. II.

CONDITIONS OF SALE OF LEASEHOLD PREMISES.

- | | |
|---|---|
| 1. Vendor to deliver abstract, but not to be required to produce lessor's title.

2. That vendor will assign upon approval of title and payment of remainder of purchase-money. | 3. Vendor to discharge all outgoing up to a certain period.

<i>Additional Clause.</i>
A. Purchaser to enter into a deed of covenant, or a bond for payment of rent, and performance of covenants. |
|---|---|

[INSERT *heading of conditions, and that highest bidder shall be the purchaser, and as to payment of deposit, as in last precedent, clauses 1 and 2.*]

Vendor to deliver abstract, but not to be required to produce lessor's title.

1. That the vendor will, within one calendar month from the day of sale, deliver unto the purchaser or his solicitor, an abstract of the indenture of lease of the said premises, and of all subsequent deeds and writings relating thereto; but the vendor shall not be required to produce his lessor's title, nor to furnish any abstract thereof, nor any other evidence of the title prior to the said indenture of lease; and the purchaser shall, within twenty-one days next after the delivery of such abstract, signify in writing to the vendor or his solicitor, his objections or requisitions, if any, to the title, and in default thereof shall be considered to have accepted the title unconditionally.

[INSERT *clause empowering vendor to annul sale in case purchaser objects to title, as in last precedent, clause 5.*]

That vendor

2. That if the purchaser's solicitor shall approve of the title, the

vendor, and all necessary parties, will, on receiving the remainder of the purchase-money, assign or otherwise effectually assure the said (short description of parcels) unto the purchaser for all the residue of the said term, free from all incumbrances, excepting the rents, covenants, conditions, provisoes, stipulations, and agreements, reserved and contained in the original lease of the said premises; the purchaser at his own expense to prepare and tender such assignment to the vendor and other parties for execution; but the expense of execution to be borne by the vendor.

No. 11.

Conditions of Sale of Leasehold Premises.

will assign upon approval of title, and payment of remainder of purchase money.

3. That the vendor will pay all rents, rates, taxes, tithes, assessments, and all other outgoings, for the said premises up to the day of next.(a)

Vendor to discharge all outgoings up to a certain period.

(a) If the vendor is the original lessee, it will be advisable to insert the following clause:—

A. That the purchaser shall enter into a deed of covenant to pay the rents, and perform the covenants reserved and contained in the said indenture of lease, on the tenant or lessee's part to be paid and performed, and to indemnify the vendor therefrom: and shall also, if thereunto required by the vendor, execute a duplicate or counterpart of such deed of covenant, or a bond in a sufficient penalty for the due payment and performance of such rents and covenants; such deed of covenant, duplicate, or counterpart, or bond, to be prepared at the vendor's expense.

Purchaser to enter into a deed of covenant, or a bond for payment of rent and performance of covenants.

[ADD clause, stipulating that purchaser, on failing to complete contract, will forfeit his deposit, and that vendor will be at liberty to sell premises, as in last precedent, clause 9.]

No. III:

AGREEMENT FOR THE SALE OF A FREEHOLD ESTATE.

1. Agreement to sell.
2. Purchaser agrees to purchase.
3. Mutual agreement between vendor and purchaser.
4. That declaration in pursuance of act for substitution of declarations for oaths shall be sufficient evidence, &c.
5. Purchaser's solicitor to prepare purchase deed.
6. In case vendor shall fail to produce a good title within specified time, purchaser to be at liberty to vacate contract.

Additional and substituted Clauses.

- A. Conveyance or assignment of outstanding estates, letters of administration, &c., to be at the purchaser's expense.
- B. Incumbrances to be charged by the vendor prior to the conveyance.
- C. Purchaser to be at the expense of preparing title deeds, &c.
- D. That purchaser shall be let into the possession and receipt of the rents and profits.
- E. Undertaking by vendor, that his tenants shall deliver up peaceable possession.

Date and
parties.

ARTICLES OF AGREEMENT entered into this day of 18 ,
BETWEEN (*vendor*), of, &c., for himself, his heirs, executors,
and administrators, of the one part, and (*purchaser*), of, &c., for
himself, his heirs, executors, and administrators, of the other
part.

Agreement to
sell.

1. The said (*vendor*) doth hereby agree with the said (*purchaser*)
to sell to him the said (*purchaser*) the fee-simple and inheritance
free from all incumbrances, (*a*) of and in (*all*) &c. HERE describe

(*a*) If the property is intended to be sold subject to a mortgage, insert as follows:—

Clause where
property is sold
subject to a
mortgage.

“Excepting only a mortgage in fee [*or for years, as the case may be*], of the said premises, created by a certain indenture of appointment and release [*or indenture of demise*], dated the 24th

the parcels); and also, that he the said (*vendor*), will, at his own expense, within one calendar month from the date hereof, deliver an abstract of title of the said premises to the said (*purchaser*) or his solicitor, and deduce a good title thereto, subject to the conditions and stipulations hereinafter contained. And if the solicitor of the said (*purchaser*) shall approve of the said title, the said (*vendor*), or his heirs, and all necessary parties, will, on or before the day of next, on receiving from the said (*purchaser*), his heirs executors, administrators, or assigns, the sum of £ , at the costs of the said (*purchaser*), his executors, administrators,

No. III.

Agreement for the Sale of a Freehold Estate.

To deliver abstract and deduce a good title.

To convey on approval of title.

day of June, 1847, and made between the said (*vendor*) of the one part, and (*mortgagee*), of the other part, for securing the sum of 2,000*l.*, and interest at the rate of 4*l.* per cent. per annum; which sum of 2,000*l.*, and interest from the day of , it is agreed shall be discharged by the said (*purchaser*), who shall effectually indemnify the said (*vendor*) therefrom."

It may not be improper to remark here, that wherever a person buys an equity of redemption, he should take care, before he completes his purchase, to ascertain whether the vendor has mortgaged any other property to the same mortgagee, as in that case the purchaser could not at any future time compel the mortgagee to allow him to redeem the purchased property, unless the mortgage on the other property was paid off also; nor would it be material in a case of this kind, whether both mortgages were made at the same, or at distinct times, as in either case the rule would be the same; nor whether such purchaser had or had not notice that such mortgage had been made: (*Oreson v. Dean*, 3 Cox, 425; see also *Titley v. Davies*, Ambl. 733; *Ex parte Carter*, *ib.*; *Fribourg v. Lord Pomfret*, *ib.* (n) 2; *Roe v. Soley*, 2 Blackst. 726; *Carter v. Charlton*, and *Collett v. Munden*, 2 Ves. 377; cited *White v. Hillacre*, 3 You. & Coll. 597; 2 Hughes Pract. Mort. 302.) If there is any reason whatever to apprehend that the vendor has executed any other mortgage, it would be a prudent course for the purchaser to give the mortgagee notice of his intended purchase, and at the same time ask him whether he has any other incumbrances affecting the vendor's property, when, if he should answer in the negative, he would then, it seems, be bound by his answer, and thus the purchaser would become entitled to redeem on paying off what is charged upon the purchased property. Under any circumstances indeed, the purchaser of an equity of redemption should give immediate notice to the mortgagee of his purchase, otherwise, if the latter were to advance any further sums of money to the mortgagor it would be binding on the purchaser, notwithstanding the lands are situate in a register county, and the mortgage deed is duly registered.

Where two estates are mortgaged to the same party, purchaser cannot compel the redemption of one only.

If the incumbrance is a rent-charge, insert—

"Excepting only an annuity, or annual rent-charge of 12*5l.* payable quarterly to A. B. of, &c. widow, issuing and payable out of the said premises [RECITE HERE, *shortly, the instrument by*

Where property is sold subject to annuity.

No. III.

Agreement for
the Sale of a
Freehold Estate.

or assigns, as hereinafter mentioned, execute a proper conveyance, and all other necessary assurances for effectually conveying and assuring the fee-simple and inheritance of the said (*parcels*) and premises, with their appurtenances, unto the said (*purchaser*), his heirs, appointees, or assigns, free from all incumbrances, (*b*) with the usual and proper covenants for title, freedom from incumbrances, and for further assurance.

Purchaser
agrees to
purchase ;

and to pay
purchase-money

2. In *consideration* whereof the said (*purchaser*) doth hereby agree with the said (*vendor*), that he the said (*purchaser*), his executors or administrators, will, on or before the day of next, upon the execution and perfecting of such conveyance and assurances as aforesaid, pay unto the said (*vendor*), his executors, administrators, or assigns, the said sum of £ , the full purchase-money of the said (*parcels*) and premises.

which the rent-charge was created]; which said annuity, or yearly rent-charge, from the day of now next, it is agreed shall be discharged by the said (*purchaser*.)”

If the property is sold subject to any subsisting leases, insert—

Where property
is sold subject
to leases.

“Excepting such leases, not exceeding the term of years, or any lesser term as the said (*vendor*) may have already granted of the said premises, or of some part thereof, at the full improved rents, reserved to be made payable yearly, or more frequently during the continuance of the estates granted by the same leases respectively.”

If subject to a lease for lives, insert—

“Excepting a certain indenture of lease, bearing date the 29th day of September, 1811, whereby a certain portion of the said premises, called [INSERT *short description of demised premises*] were demised by J. S. Esq. to A.B., yeoman, for the term of ninety-nine years, determinable on three lives, one of whom only is now living, at the yearly rent of 12*l.* payable half-yearly, at Michaelmas and Lady-day.”

(*b*) If the property is to be sold subject to a mortgage, insert—

“Excepting the said hereinbefore-mentioned mortgage,”

3. AND IT IS HEREBY MUTUALLY AGREED by and between the said (*vendor*) and (*purchaser*), that the expense of all disentailing deeds, of acknowledgments of married women, covenants for the production of title deeds, [as also the conveyance, assignment, or surrender of any outstanding estate, term, or interest, and the obtaining of any probate or letters of administration, shall be borne by the said (*vendor*).] (*c*)

No. III.

Agreement for the Sale of a Freehold Estate.

Mutual agreement between vendor and purchaser.

If a rent-charge, state—

“Excepting the said hereinbefore-mentioned rent-charge of,” &c.

If the leases, say—

“Excepting the said hereinbefore-mentioned lease or leases.”

(*c*) It frequently happens that the purchaser is to be at the expense of getting in outstanding estates. In such case, the words in brackets must be left out and the following substituted:—

A. “But the conveyance, assignment, or surrender of any outstanding estate, term, or interest, and the obtaining of any probate or letters of administration, or any document required for evidencing the title thereof, shall be prepared or obtained by the solicitor of the said (*vendor*) at the expense of the said purchaser.”

Conveyance on assignment of outstanding estate, letters of administration, &c. to be at the purchaser's expense.

If the lands are supposed to be subject to any heavy incumbrances, the following clause may prove useful:—

B. “That all incumbrances to which the said premises or any of them may be subject, shall be discharged by and at the expense of the said (*vendor*), and the same premises effectually released therefrom previously to the conveyance to the said (*purchaser*); which said release or discharge of incumbrances shall be effected by a separate and distinct assurance or assurances, and be prepared by the solicitor of, and at the expense of, the said (*vendor*), and be approved of by the solicitor of, and at the expense of, the said purchaser, but the expenses of such execution shall be borne by the said (*vendor*).”

Incumbrances to be discharged by vendor prior to conveyance.

As the expense of the production and examination of title deeds, including journeys and the expense of providing the purchaser with attested copies, must, in the absence of some express stipulation to the contrary, be borne by the vendor, it will be necessary, where these costs are to be defrayed by the purchaser, to insert—

C. “That the said (*purchaser*) shall be at the expense of com-

Purchaser to be

No. III.

*Agreement for
the Sale of a
Freehold Estate.*

Declaration in
pursuance of
act for substitution of declarations for oaths shall be sufficient evidence, &c.

4. That recitals of descents, births, marriages, and deaths, payments of moneys, heirships, intestacies, devises, vestings of terms of years, and all other facts, of what nature or kind soever, contained in deeds, or court-rolls, or wills, twenty years old or upwards, shall be deemed sufficient evidence of such facts respectively; and where any doubt or question shall exist or arise, on account of any property having been conveyed under a defective description, or any hedges having been removed, or other evidence of seisin or identity, or of boundaries not afforded on the face of the deeds, a declaration (in pursuance of the act of Parliament "*for the substitution of declarations in lieu of voluntary*

at the expense
of comparing
title deeds, &c.

paring the title deeds, wills, and evidences of title, whether of record or not, and whether in the possession of the said (*vendor*), or not, with the abstract; the said (*vendor*) engaging to furnish an abstract thereof, and to acquaint the said (*purchaser*) when and where such wills, or other evidences of title on record, were proved and recorded, and with whom such title deeds as are not in the custody of the said (*vendor*), are, and may be so compared; and that the expense of all attested, or other copies of such deeds, wills, or other evidences of title, which the said (*purchaser*) shall require, shall be furnished him at his own costs."

Where the purchaser is to be let into possession prior to the completion of the purchase, insert the following clause:—

That purchaser shall be let into possession and receipt of the rents and profits.

D. "That possession of the said premises shall be delivered to the said (*purchaser*) from the day of , from which time he shall be entitled to receive the rents and profits thereof; all outgoings in respect of the same premises up to the said day of , to be discharged by the said (*vendor*.)

Sometimes the following undertaking is entered into by the vendor:—

Undertaking by vendor that his tenants shall deliver up peaceable possession.

E. "That the said (*vendor*) doth hereby undertake and agree with the said (*purchaser*), that sufficient notices have been served upon the several tenants of the said premises to quit the possession thereof on the day of next, on which day such tenants shall and will be compelled to deliver up peaceable possession of the same premises accordingly."

and extra-judicial oaths,") of undisturbed possession, or receipts of the rents for twenty years and upwards, according to the title deduced, or of the identity of the premises, shall in any case, not especially provided for by this contract, be deemed sufficient evidence of identity. (d)

No. III.

Agreement for
the Sale of a
Freehold Estate.

5. That the deed of conveyance of the said (*parcels*) and premises shall be prepared by the solicitor of, and at the expense of, the said (*purchaser*), and such conveyance shall be settled and approved of, on the part of the said (*vendor*) and (*purchaser*), by their respective counsel or solicitors, and each of them the said (*vendor*) and (*purchaser*), shall pay the respective costs of his own solicitor and counsel.

Purchaser's
solicitor to pre-
pare purchase
deed.

6. AND LASTLY, that if the said (*vendor*) shall not deliver his abstract of title to the said (*purchaser*), his heirs or assigns, within the space of one calendar month from the date hereof, or shall not deduce a good marketable title to the said (*parcels*) and premises, and every part of the same, before the day of next, as the case may be, this present contract shall, at the option of the said (*purchaser*), his heirs or assigns, be utterly void to all intents and purposes whatsoever, and the jurisdiction of equity wholly barred; it being the true intent and meaning of the parties hereto, that, in the event aforesaid, the performance or execution of this agreement shall not be enforced against the said (*purchaser*) in any court of equity, notwithstanding any rule, if such rule there be, that time cannot be made the essence of a contract, or any other rule or maxim whatsoever. *In witness* whereof the said parties have hereunto set their hands the day and year first above written.

In case vendor
shall fail to
produce a good
title within
specified time,
purchaser to
be at liberty
to vacate the
contract.

Time to be
considered as
part of the
essence of the
contract.

WITNESS :

(d) If there is any doubt of the vendor's ability to confer a good title, or that he may incur considerable expense in so doing, insert here clause in note (c) suggestions, *ante*, p. 3.

If the purchaser is to take the timber at a valuation, insert clause 7, *ante*, p. 6.

If any mistake in description is likely to occur, insert clause 8, *ante*, p. 7.

If it is at all probable the vendor may be unable to make a good title to some portion of the property, and he is desirous of selling what he can show a good title to, insert clause to that effect in note, *ante*, p. 7.

If the title deeds are to be retained by the vendor, insert clause in note, *ante*, p. 8.

If by largest purchaser, substitute the clause following it.

No. IV.

AGREEMENT FOR THE PURCHASE OF LEASEHOLD PROPERTY.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Agreement to purchase subject to rents and covenants. 2. That vendor will deliver an abstract. 3. That if purchaser shall approve of title, vendor will, on receiving his purchase-money, assign premises to purchaser. 4. That vendor will discharge all outgoings up to a certain period. 5. Agreement by purchaser to pay purchase-money, and indemnify vendor from covenants in original lease. 6. Also, if required, to execute a bond, | <p>&c. for payment of rent and performance of covenants.</p> <hr style="width: 10%; margin: 10px auto;"/> <p style="text-align: center;"><i>Additional Clauses.</i></p> <ol style="list-style-type: none"> A. Each purchaser to give a bond for payment of rent and performance of covenants. B. Each purchaser to enter into a covenant for payment of his portion of the rents and performance of his part of the covenants. C. That purchaser, retaining the title deeds, shall enter into a covenant for their production. |
|--|---|

[Stamp, 2s. 6d.]

ARTICLES OF AGREEMENT, entered into this day
of 18 , BETWEEN (*vendor*) of, &c., for himself, his executors
and administrators, of the one part, and (*purchaser*) of, &c., for
himself, his executors and administrators, of the other part.

Agreement to
purchase,
subject to rents
and covenants.

1. THE said (*vendor*), in consideration of the sum of £ , doth
hereby agree with the said (*purchaser*) to sell to him the said (*purchaser*) all his the said (*vendor's*) estate, term and interest of and in all [HERE DESCRIBE *parcels*], for the residue of an absolute term of ninety-nine years(*a*) from the day of 1816, granted and

(*a*) If the lease is determinable on lives, substitute

“For the residue of a term of ninety-nine years determinable on three lives, aged respectively about sixty years, fifty-three years, and forty years.”

created by a certain indenture dated on that day, (b) and made between (lessor) of the one part, and (lessee) of the other part, subject to the rents, covenants, conditions, provisoes, stipulations and agreements therein contained on the part of the lessee to be paid, observed, and performed.

No. IV.

Agreement
for the Purchase
of Leasehold
Property.

2. AND ALSO, that the said (vendor) will, at his own expense, within one calendar month from the date hereof, deliver unto the said (purchaser), or his solicitor, an abstract of the said indenture of lease, and all subsequent deeds and writings relating to the title of the said premises; but the said vendor shall not be required to produce his lessor's title, nor to furnish any abstract thereof, nor any other evidence of title to the said premises, anterior to the said indenture of the day of whereby the said term was granted or created. (c)

That vendor
will deliver
an abstract.

If any of the lives have dropped, that fact must be noticed, as, viz. :

“For the residue of a term, &c., determinable on three lives, whereof two, one aged about sixty years, and the other about forty years, are still living.”

If there is a perpetual right of renewal, add,

“Subject to perpetual right of renewal, on payment of a fine, of £ .”

If the right of renewal is limited, add,

“Subject to a right of adding two fresh lives on the dropping of either of the now existing lives, upon payment of a fine of £ for each life so added.”

(b) The term for which the premises are holden should always be correctly stated, and never be exaggerated in point of time, for this at law would afford a sufficient ground for the purchaser to rescind his contract *in toto*, as it also would in equity, if the duration of the vendor's interest were to be grossly exaggerated: as where the term is stated to be sixteen years, which turns out to be only six (*Long v. Fletcher*, 2 Eq. Ca. Abr. 5); but, generally speaking, a court of equity, unless the misrepresentation is very great, will uphold the contract, and deduct a proportionate part of the purchase money (*Guest v. Homfrey*, 5 Ves. 818; *Hanger v. Eyles*, 21 Vin. Abr. A. pl. 1; 1 Hughes Pract. Sales, 26, 2nd edit.); for agreements of this kind ought to receive a reasonable construction, as the parties cannot be supposed to intend that there shall be the exact term, neither more nor less by a single day; and it has been held not unreasonable that the period mentioned in the agreement should be calculated from the last preceding day when the rent was payable, including therefore the current half-year: (*Balworth v. Hassell*, 4 Camp. N. P. C. 140.)

Term for which
the premises are
held should be
correctly stated.

(c) Where a vendor of leasehold property is unable to procure his lessor's title, When vendor

No. IV.

*Agreement
for the Purchase
of Leasehold
Property.*

That if purchaser shall approve of title, vendor will, on receiving his purchase money, assign premises to purchaser.

3. AND if the solicitor of the said (*purchaser*) shall approve of the title, the said (*vendor*) will, on receiving the said purchase money, and with the concurrence of all necessary parties, and at the costs of the said (*purchaser*), assign or otherwise effectually assure the said (*parcels*) unto the said (*purchaser*), or as he shall appoint, for all the residue of the said term, free from all incumbrances, except the rents, covenants, conditions, provisoes, stipulations and agreements so as aforesaid reserved and contained in the original lease of the said premises.

That vendor will discharge all outgoing up to a certain period.

4. THAT the said (*vendor*) will pay, satisfy and discharge all rents, rates, taxes, tithes, assessments and all other outgoing for the said premises up to the day of next.

Agreement by purchaser to pay purchase money, and to indemnify vendor from covenants in original lease.

5. AND the said (*purchaser*) hereby agrees to pay the sum of £ , and also will, in the said deed of assignment to him, if thereunto required by the said (*vendor*), enter into a covenant thenceforth to pay the rent and perform the covenants reserved and contained in the said indenture of lease, and to indemnify the said (*vendor*) therefrom.

Also, if required, to execute a bond, &c., for payment of rent, and performance of covenants.

6. AND also shall and will, if thereunto required by the said (*vendor*) execute a duplicate or counterpart of the said deed of covenant, or a bond, in a sufficient penalty, for payment and performance of the said rents, covenants, conditions, provisoes, stipulations and agreements; the same duplicate or counterpart, cove-

should provide against producing his lessor's title.

he must take care to provide against the purchaser's requiring it (*Fielder v. Hocker*, 2 Mer. 424; *Purvis v. Rayer*, 9 Pri. 488; *Souter v. Drake*, 5 B. & Ad. 992), otherwise the vendor cannot enforce a specific performance. A vendee of leaseholds is a purchaser *pro tanto*, and as such entitled to call for the inspection of the title of the original lessor before he can be compelled to complete his contract: (*Rosewell v. Vaughan*, Cro. Jac. 196; *Lysney v. Selby*, 2 Lord Raym. 1118; *Keech v. Hall*, Doug. 21; *Waring v. Mackreth*, 11 Ves. 343.) But notwithstanding a vendor, in the absence of a stipulation to the contrary, cannot enforce a specific performance without showing a title in the lessor, it still remains undecided whether a purchaser, insisting on a specific performance, can compel the vendor to produce his lessor's title; and notwithstanding the question was raised in one or two cases which came before Lord Eldon, he never arrived at any actual decision on the point, although his preponderating opinion seems to have been, that where there was no express stipulation to the contrary, the purchaser was entitled to call for such production: (*White v. Foljambe*, 11 Ves. 337; *Radcliffe v. Warrington*, 12 ib. 326; *Deverall v. Bolton*, 18 ib. 205.)

nant or bond, to be prepared by and at the expense of the said (vendor.) (d)

No. IV.

Agreement
for the Purchase
of Leasehold
Property.

If time is to be the essence of the contract, insert clause at the end of clause 6, Prec. No. II., ante, p. 17.

(d) Where leasehold premises held under one entire rent are intended to be sold in lots, the three following clauses will be found serviceable:—

A. "That each of the respective purchasers shall, on the completion of the purchase, at his own expense execute to the vendor a bond in the penal sum of £ , conditioned for indemnifying the vendor against the rents and covenants reserved and contained in the original lease, in respect of the premises purchased by and assigned to such purchaser.

Each purchaser to give a bond for the payment of rents and the performance of covenants.

B. "That as all the lots now offered for sale are included in one lease, subject to one entire rent of £ , of which rent it is intended that each of the said lots shall bear a proportionate part, the purchaser of each lot shall enter into a covenant with the purchasers of the other lots for the payment and performance of his (the covenantor's) proportion of the rents and covenants, and to give to such other purchasers a power of distress on the premises purchased by the covenantor, as an indemnity against such proportion; such deeds of indemnity to be prepared by and at the expense of the respective purchasers requiring the same.

Each purchaser to enter into a covenant for payment of his portion of the rents, and performance of his part of the covenants.

C. "That the lease and assignments shall be delivered to the purchaser of the lot which shall be sold for the highest price, upon his entering into the usual covenants for the production thereof with the other purchasers, at the expense of the latter; and if the price of the respective lots shall be equal, the purchaser of Lot 1 shall for the purposes of this condition be considered as the largest purchaser; but if any of the lots remain unsold, the vendor shall be considered as standing in the place of, and shall have all the privileges which are hereby given to, the largest purchaser."

That purchaser retaining the title deeds, shall enter into a covenant for their production.

No. IV.

AS WITNESS our hands,

Agreement
for the Purchase
of Leasehold
Property.

A. B. (vendor.)(e)

C. D. (purchaser.)

WITNESS.

Agreement
binding on the
party signing
although
unsigned by the
other party.

(e) An agreement is binding on the party signing it, although it be not signed by the other contracting parties. This important point was decided very shortly after the passing of the Statute of Frauds, and thus the law has continued down to the present day: (*Hatton v. Gray*, 2 Chan. Cas. 164; *Cotton v. Lee*, 2 Bro. C. C. 564; *Robson v. Collins*, 7 Ves. 130; *Seton v. Slade*, *ib.* 265; *Fowle v. Freeman*, 9 *ib.* 351; *Wain v. Warlters*, 5 East, 10; *Huddleston v. Briscoe*, 11 Ves. 583; *Western v. Russell*, 3 Ves. & Bea. 187; *Saunders v. Wakefield*, 4 B. & A. 595; *Jenkins v. Reynolds*, 3 Bro. & Bing. 14; *Laythorpe v. Bryant*, 5 Bing. N. C. 735; see also 1 Fonbl. Eq. 177; 1 Hughes Pract. Sales, 92.)

May be entered
into by lawfully
authorized
agent.

An agreement may be entered into by the lawfully authorized agent of the party to be charged, as well as by the party himself, such being within the words of the Statute of Frauds (29 Car. 2, c. 3, s. 4), nor is it necessary that the agent for this purpose should be appointed by writing: (1 Hughes Pract. Sales, 92.) But it is requisite that the agent should be a third party, as neither of the contracting parties can be agent for the other: (*Wright v. Dannah*, 2 Camp. N. P. C. 203.) And notwithstanding the agent's signature is binding, yet the clerk of such an agent has not such a general authority as will enable him to sign, so as to bind the principal; though the principal may, if he pleases, confer such an authority upon him, or it may be even implied by his subsequently acquiescing in his so doing: (*Maclean v. Dunn*, 4 Bing. 722; *Coles v. Tregothic*, 9 Ves. 234.) And even a signature by a party as a witness may be a sufficient signature; but in order to render it so, it must be shown that he was aware of the contents of the instrument at the time he signed it; for the act of signing will of itself afford no proof of that fact, it being so frequent a practice for persons to sign their names as witnesses to agreements or other writings without the slightest knowledge of their purport or contents: (*Walford v. Beasley*, 3 Atk. 508; *Harding v. Crethorn*, 1 Esp. N. P. C. 58.)

Signature of a
party as a
witness may
be a sufficient
signature where
he is aware of
the contents.

No. V.

AGREEMENT FOR THE PURCHASE OF COPYHOLDS OF INHERITANCE.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Vendor agrees to sell. 2. To deliver abstract. 3. That if purchaser approves of the title, vendor will surrender to his use. 4. Vendor to execute usual deeds of trust and covenant. 5. Purchaser agrees to purchase, and pay purchase money. 6. Mutual agreement between vendor and purchaser, to pay fees and charges of their respective counsel and solicitors. | <ol style="list-style-type: none"> 7. All outgoings to be discharged by vendor up to the time of surrender. 8. Purchaser to defray the expenses of examining court rolls, &c. 9. Purchaser to pay the expense of surrender and admission, and the fine payable thereupon. 10. Clause whereby the parties bind themselves in liquidated damages for due performance of agreement. |
|---|--|

[Stamp, 2s. 6d.]

[INSERT heading, *ut ante*, No. III., clause 1, p. 12.]

1. THE said (*vendor*) doth hereby agree with the said (*purchaser*) to sell to the said (*purchaser*) the fee-simple and inheritance in possession, according to the custom of the manor of A., in the county of B., of and in all, &c., [HERE DESCRIBE *copyhold premises*], for the price of 597*l.* (*a*)

(a) A copyholder, being in the eye of the law merely a tenant at will, had no interest which he could convey to another; all he could do was, to relinquish his own right to the property. When, therefore, he was desirous of passing his estate to a third party, he surrendered the premises into the hands of the lord, under the confidence that he would regrant them to the person he himself should name, until at length, in course of time, this mode of alienation became so well established, that if the lord refused to regrant after accepting

No. V.

Agreement
for the Purchase
of Copyholds
of Inheritance.

To deliver
abstract,

That if pur-
chaser approves
of title, vendor
will surrender
to his use.

2. ALSO, that the said (*vendor*) will within the space of one month from the date hereof, at his own expense, deliver to the said (*purchaser*) or his solicitor, an abstract of the title of the said copyhold premises.

3. THAT if the solicitor of the said (*purchaser*) shall approve of the said title, the said (*vendor*), and all necessary parties, shall, on or before the day of duly surrender the same premises, according to the custom of the said manor, to the use of the said (*purchaser*), his heirs or assigns, as he or they shall direct, to be holden at the will of the lord, according to the custom of the said manor, (b) subject to the ancient rents, suits and services therefore due and of right accustomed in respect thereof, but free from all other incumbrances whatsoever.

a resignation made under such confidence, he would not only have been compelled to do so by subpoena in equity (*Williams v. Lonsdale*, 3 Ves. 752, 372; *Roe v. Griffiths*, 4 Bur. 1961; *Vaughan d. Atkins v. Atkins*, 5 *ib.* 2787); but also by mandamus at law (*Rex v. Hendon (Lord of the Manor of)*, 2 T. R. 484; *Rex v. Coggan*, 9 East, 431; *Rex v. Stafford (Marquis of)*, 7 East, 521; *Rex v. Water Eaton*, 2 Smith. 54; *Rex v. Wilson*, 10 B. & C. 80; *Rex v. Boughey*, 1 B. & C. 565; S. C. by the name of *Rex v. Sheen (Lord of the Manor of)*, 2 Dow. & Ry. 824; see also Wat. Cop. 50, 51; 2 Hughes Pract. Sales, 99, 111, 112.) And this, whether the surrender be made of a portion only, or of the entirety of the copyhold premises (*Snag v. Fox*, Palm. 342; *Freeman v. Phillips*, 4 Mau. & Selw. 486), or of a portion, or the whole of the copyholder's interest therein: (*Fitch v. Hockley*, Cro. Eliz. 441; Scriv. Cop. 623; 2 Hughes Pract. Sales, 112.)

Surrenders of
copyholds.

(b) A surrender is defined to be a yielding up of the estate by the tenant to the lord, either by relinquishment or resignation of such estate, or as the means of conveying it to another. It may be made in court, or into the hands of the lord, or his steward, or his deputy steward out of court, without a special custom to do so: (*Burdet's case*, Cro. Eliz. 48; *Duffield v. Andrews*, 1 Salk. 184; *Lord Dacre's case*, 1 Leon. 289; *Parker v. Kett*, 1 Salk. 95; *Tukely v. Hawkins*, 1 Lord Raym. 76; *Burgesse v. Foster*, 1 Leon. 289.) By special custom also, but not otherwise, a copyholder may surrender out of court to the bailiff, beadle, or reeve of the manor (Wat. Cop. 77.) By special custom also, the surrender may be made into the hands of two tenants of the manor (Co. Litt. 59 a), or of one tenant (Kitch. 1026), or into the hands of the bailiff in the presence of two tenants; or into the hands of a tenant in the presence of two persons (Co. Litt. 59 a; Kitch. 201; *Turner v. Benny*, 1 Mod. 61.) And notwithstanding a doubt has existed in practice, it is now clearly settled that a copyholder may surrender by power of attorney as well as in person, for all such acts as a copyholder can do by himself he may authorize another to do for him, either in or out of court, without any special custom for it: (*Combe's case*, 9 Co. 75 b; *Parker v. Keck*, Com. 85; *Warner v. Hargreave*, 2 Roll. Rep. 393; 1 Wat. Cop. 77; Scriv. Cop. 154.) But notwithstanding a surrender by attorney is valid, a purchaser has still a right to insist upon a surrender being made by the vendor in person; for a surrender by

4. THAT the said (*vendor*), and all other necessary parties will, on the said day of , execute the usual deeds of trust and covenant for title of the same copyhold premises.

No. V.

Agreement
for the Purchase
of Copyholds
of Inheritance.

5. IN CONSIDERATION whereof the said (*purchaser*) doth hereby agree with the said (*vendor*) that on such surrender being made and perfected, and such deed of trust and covenant executed as afore-said, that he the said (*purchaser*) will pay unto the said (*vendor*) the said sum of 597l.

Vendor to
execute usual
deeds of trust
and covenant.

Purchaser
agrees to
purchase and
pay purchase
money.

6 AND IT IS HEREBY MUTUALLY AGREED, by and between

Mutual agree-
ment between

attorney necessarily tends to multiply the proofs of his title: the power may also possibly be revoked, or it may be lost, and thus expose him to difficulties: (*Mitchell v. Neale*, 2 Ves. sen. 679; *Noel v. Weston*, 9 Mod. 50.) And where it is necessary to allege a special custom to enable a copyholder to surrender in person, there he cannot surrender by attorney; as, for example, where the custom is to surrender into the hands of two tenants (Co. Litt. 59 a), or into the hands of a bailiff or reeve of the manor (*ib.*); for in either of these cases a special custom would be necessary to warrant the custom of the surrender of the copyholder himself, and therefore, a surrender by attorney would not be good without a further custom for so doing (Wat. Cop. 68.) Neither can a person having a bare authority to sell land, as an executor for example, surrender by attorney: (*Combe's case*, 9 Co. 75.) The person who appoints the attorney must, in point of fact, have such a power to assign as may be so executed, for *delegatus non potest delegare*. The person appointing the attorney must also be free from legal disability; for a person *non compos*, under coverture, or an infant, cannot make an attorney by the common law, nor can they be enabled so to do by custom. But though infants and married women are disabled from appointing attorneys to surrender, they are empowered by the statute 9 Geo. 1, c. 29, to make attorneys for the purpose of admission; and infants, or a *feme covert* may be themselves appointed an attorney for another, the act being clearly ministerial. The attorney must be appointed by deed (Gillb. Ten. 252), and he should pursue his authority strictly, and consistently with the customs of the manor; still, if he exceed his authority, the surrender will not be void *in toto*, but only as to the excess: (*George d. Thornbury v. Jew*, Ambl. 627.) An attorney may surrender, either in his own name, or in the name of his principal (*Parker v. Kett*, 1 Salk. 96); but, in the latter case, the power should be referred to. It is no objection to the attorney's acting, that the principal himself is also present: (Scriv. Cop. 157.)

Copyholder can
pass his estate
by surrender
and admission.

In the absence of any stipulation to the above effect, the purchaser is liable to the payment of the costs, both the surrender, and of his own admission, and the fine payable thereupon (*Drury v. Mann*, 1 Atk. 95); at the same time, to prevent the possibility of disputes, it will be advisable to insert the above clause whenever it is intended that the purchaser is to defray the expenses. If it is intended that these charges are to be borne by the vendor, it is absolutely necessary that it should be so stated; and this also in all cases should in express terms be extended to the fine, when it is intended that the vendor is to pay it; as an agreement, or even a covenant from the vendor to convey and assure the copyholds at his own expense, will not render him liable to the payment of the fine: the title being perfected by the admission, and the fine not payable until afterwards (*Graham v. Sime*, 1 East, 632; see also *Dalton v. Hammond*, Cro. Eliz. 772; *Fisher v. Rogers*, 1 Roll. Abr. 506; *Rex v. Hendon* (*Lord of the Manor of*), 2 T. R. 434; 1 Wat. Cop. 347; 1 Hughes Pract. Sales, 33.)

Practical
observations
relative to the
costs of
surrender and
admission.

No. V. the said (*vendor*) and (*purchaser*), that each of them respectively shall pay the fees and charges of his own counsel and solicitor, in attending the investigation of the title in the usual and ordinary course of business.

Agreement
for the Purchase
of Copyholds
of Inheritance.

vendor and
purchaser to
pay fees of their
respective
counsel and
solicitors.

All outgoing to
be discharged by
vendor up to
the time of sur-
render, &c.

Purchaser to
defray the
expenses of
examining court
rolls, &c.

7. THAT all rates, taxes and outgoings, payable in respect of the said copyhold premises shall be paid by the said (*vendor*) up to the time of the surrender of the said premises, and admittance of the said (*purchaser*) to the same.

8. THAT the said (*purchaser*) shall defray the expenses of examining the court rolls of the said manor, and of any special courts which may be deemed expedient; as also of comparing the title deeds, wills, court rolls and other evidences of title, with the abstract; the said (*vendor*) engaging to furnish abstracts thereof, and to inform the said (*purchaser*) when and where such deeds, wills, and other evidences of title were proved and recorded.

Purchaser to
pay the expenses
of surrender and
admission, and
the fine payable
thereon.

9. THAT the said (*purchaser*) shall pay the expenses of the said surrender, and of all fees and fines upon such surrender and admission of the said (*purchaser*) to the said premises; and that the deed of trust and covenant shall be prepared by the solicitor of, and at the expense of, the said (*purchaser*.) (c)

Clause whereby
the parties bind
themselves in
liquidated
damages for due
performance of
the agreement.

10. AND for the due performance of the several agreements herein contained on their respective parts, each of them the said parties hereto bindeth himself, his heirs, executors and administrators,

If the vendor is to pay all these expenses, substitute the following clause :—

“That the said (*vendor*) will pay all the costs of the surrender and admission of the said (*purchaser*) to the said premises, and also the fine payable in respect thereof; but the said (*purchaser*) shall pay for the deed of trust and covenant, and such other assurances as he shall require.”

(c) If time is to be made part of the essence of the contract, insert here clause 6, *ante*, p. 17.

to the other of them, his executors, administrators and assigns, in the sum of £ , by way of liquidated damages, and not by way of penalty.

No. V.

*Agreement
for the Purchase
of Copyholds
of Inheritance.*

IN WITNESS, &c.

No. VI.

AGREEMENT FOR THE PURCHASE OF LEASEHOLD PREMISES,
WITH THE FIXTURES AND IMPLEMENTS OF TRADE, AND
THE GOODWILL OF THE BUSINESS.

- | | |
|--|--|
| 1. Agreement by vendor to sell.

2. By purchaser to buy.

3. Vendor to assign premises to purchaser. | 4. Purchaser to give a fixed price for the premises and good-will of the business.

5. Fixtures to be paid for at a valuation, by four instalments, to be secured by bond. |
|--|--|
-

(INSERT *same heading as in last precedent.*)

Agreement by
vendor to sell.

1. THE said (*vendor*) doth hereby agree with the said (*purchaser*) to sell and assign unto him the said (*purchaser*), all that the messuage, or dwelling-house, workshops, warehouses, buildings, and premises, situate, &c., whereon the said (*vendor*) has for several years past carried on the trade or business of (STATE *nature of business*), and which he now holds for the residue of a term of years, under an indenture of lease dated the day of made between (*lessor*) of the one part, and the said (*vendor*) of the other part; as also of the fixtures, engines, machinery, utensils, tools, and implements, used or employed in carrying on the said trade or business; together with the said business and the goodwill of the same. [INSERT *clause that vendor will deliver abstract, ut ante*, No. IV., *clause 2*, p. 19.]

By purchaser
to buy.

2. IN CONSIDERATION whereof the said (*purchaser*) doth hereby agree with the said (*vendor*) to purchase the residue of the said term in the said premises, as also the said fixtures, engines, machinery, utensils, and implements used or employed in carrying

on the said trade or business in or upon the said premises; together with the said business, and the goodwill thereof, upon the terms and conditions hereafter mentioned.

No. VI.

Agreement for
Purchase of
Leasehold
Premises,
Goodwill, &c.

3. NOW THEREFORE IT IS MUTUALLY DECLARED AND AGREED by and between the said (*vendor*) and (*purchaser*) THAT if the solicitor of the said (*purchaser*) shall approve of the title of the said (*vendor*), the said (*vendor*) will on the day of next, at the costs of the said (*purchaser*), by proper deed of assignment, assign the said messuage or dwelling-house, workshop, warehouses, buildings, and premises, with all usual and proper covenants, unto the said (*purchaser*), his executors, administrators, and assigns, for all the residue of the said term of years; AND ALSO all the fixtures, engines, machinery, utensils, tools, and implements employed in carrying on the said trade or business in or upon the said premises; and which said deed of assignment, in addition to the usual and ordinary covenants, shall also contain a covenant on the part of the said (*vendor*), that he will from time to time, and all times hereafter, recommend the said (*purchaser*) to all the customers of him the said (*vendor*), and use his utmost endeavours to induce them to deal with the said (*purchaser*.) AND that the said (*vendor*) shall not, at any time hereafter, either directly or indirectly, alone, or in partnership with any other person or persons whomsoever, carry on the trade or business of a (*INSERT title of trade*) at (*present place of business*), or at any other place or places within the distance of twenty miles thereof.

Vendor to
assign premises
to purchaser.

4. THAT immediately upon the execution of the said deed of assignment, the said (*purchaser*) shall pay unto the said (*vendor*) the sum of £ , as for the purchase of the residue of the said term in the said messuage or dwelling-house, workshop, warehouses, buildings, and premises, and for the purchase of the said trade or business, and the goodwill thereof. THAT within the space of months a valuation shall be made and taken of the said fixtures, engines, machinery, utensils, tools, and implements, by two indifferent persons, one to be chosen by the said (*vendor*), and the other to be chosen by the said (*purchaser*), who, previously to their entering on their reference, shall choose an umpire between them, whose decision, in case the said re-

Purchaser to
give a fixed
price for the
premises and
goodwill of
the business.

No. VI.
 Agreement for
 Purchase of
 Leasehold
 Premises,
 Goodwill, &c.

referees shall not agree, shall be binding on both parties; and in case either of the said parties shall refuse to name a referee within seven days after request by the other party, then the referee named by the other party may proceed alone, and his award shall be conclusive on both parties.

Fixtures to be
 paid for at a
 valuation, by
 four instal-
 ments, to be
 secured by
 bond.

5. THAT the said (*purchaser*) shall pay or secure unto the said (*vendor*) the amount of such valuation for four equal instalments, at three, six, nine, and twelve calendar months, (a) [and to be secured by the bond of the said (*purchaser*) in a sufficient penalty for securing the due payment thereof, together with interest on each instalment respectively, at the rate of 5*l.* for every 100*l.* by the year.] AND that the said (*vendor*) shall remain in the possession of all and singular the said premises which are agreed to be hereby assigned, with full and free liberty to have, hold, use, and enjoy the same in the same manner as heretofore, up to the day of next; and shall pay and discharge all rent, rates, taxes, and other outgoings up to that period, on which day the possession of all the said premises shall be delivered to the said (*purchaser*.)

IN WITNESS, &c.

(a) If the amount is to be secured by promissory notes, substitute for words within brackets above—

Substituted
 clause where
 the amount of
 valuation is
 secured by
 promissory
 note.

“To be secured by four promissory notes of the said (*purchaser*) as hereinafter mentioned (that is to say) the first of such promissory notes for payment of one fourth of the amount of such valuation, and interest at the rate of 5*l.* for every 100*l.* by the year, at three calendar months after the date of the said intended indenture of assignment; the second of such promissory notes for the payment of a like amount and interest at six calendar months after the date of the said indenture; the third of such promissory notes for the same amount and interest, at nine calendar months after the date of the said indenture; and the fourth of such promissory notes at twelve calendar months from the date of the said indenture.”

No. VII.

AGREEMENT FOR THE DIVISION AND INCLOSURE OF COMMON LANDS, BETWEEN THE LORD OF THE MANOR, INCUMBENT, OF THE PARISH, AND PROPRIETORS OF RIGHTS OF COMMON.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of agreement for allotment. 3. Testatum—Division to be made by commissioner. 4. Mutual agreement between the proprietors of rights of common. 5. Commissioners to set out proper allotments for supplying materials to repair roads, and to mark out roads. 6. To make allotments. 7. Commissioners to determine the differences as to rights of common, and between landlords and tenants. 8. Tenants for life to be authorized to effect mortgages to raise money to cover expenses of inclosure. | <ol style="list-style-type: none"> 9. All allotments to be of the same tenure as the lands in respect of which they are allotted, saving the rights of the lord, except as to the rights of common. 10. Twenty years' exercise of right of common to be deemed conclusive evidence of such right. 11. As to appointment of commissioners. 12. Commissioners to execute an award. 13. Notice of appeal to be given to all parties. 14. Expenses to be paid by lord and persons interested, in the proportion of the value of their respective allotments. |
|---|--|

1. ARTICLES OF AGREEMENT entered into this day Parties.
of , BETWEEN (*lord of the manor*) of, &c., lord of the
manor of A. in the county of B. of the first part, (*incumbent of*
the parish) of, &c., of the second part, and (*names and descriptions*
of proprietors of common lands) of the third part.

2. WHEREAS at a meeting held at (*STATE place of meeting*) on Recital of
the day of , pursuant to a public notice given on agreement for
the day of last, it was agreed by the persons then and allotment.
there present, being in number and value four-fifth parts of the
parties interested in the common fields lying in the parish, that the

No. VII. same should be allotted and inclosed in manner hereinafter mentioned.

*Agreement for
Division and
Inclosure of
Common Lands.*

Testatum—
Division to be
made by com-
missioner.

3. NOW THESE PRESENTS WITNESS, and it is hereby agreed, that a division, by proper metes and bounds, shall be made by the commissioner hereinafter named of the said open and common fields, which shall be allotted amongst the several parties interested therein, in lieu and satisfaction of, and in respect of, and according to, their several rights in the same common lands.

Mutual
agreement
between the
proprietors of
rights of
common.

4. AND the said several parties hereto of the third part, not jointly, but each severally for himself, his heirs, executors, and administrators, and with the consent of the said (*lord*) as lord of the said manor, do hereby respectively agree with the other of them, his heirs, executors, and administrators;

Commissioners
to set out proper
allotments for
supplying
materials to
repair roads
and to mark
out roads.

5. THAT the said commissioner shall set out such part or parts of the said common lands, not exceeding in the whole acres, for the purpose of supplying proper materials for the use of the several persons interested in the said commons, for the making and repairs of the roads within the said parishes, or such other purposes of a like kind as the said commissioner may consider necessary; all which said roads, so far as they shall extend over or across the said common lands, shall be marked out by the said commissioner in such manner as he shall consider proper.

To make
allotments.

6. THAT the said commissioner shall allot unto the said (*lord*) one full tenth-part of the said common lands as his proportion thereof, as lord of the said manor and soil of the said common lands, beyond what the said commissioner may allot unto him in respect of his demesnes and freehold lands, (*a*) within the said manor, and shall also allot unto the said (*incumbent*), one full fifteenth part of the said common lands, in lieu of the tithes of the said common lands to which he is entitled as rector of the said parish, AND shall then allot the remainder of the said common lands

(*a*) A lord of a manor is entitled to an allotment in respect of his demesne lands, as well as his allotment as lord of the manor: (*Arundel v. Falmouth*, 2 Mau. & Selw. 440.)

unto the said parties hereto of the third part, and all other persons entitled to rights of common in the said common lands in proportion to the value of the freehold and copyhold lands and hereditaments held by them of the said manor, due regard being had to the quantity, quality, and contiguity of the lands to be allotted, as well as to the respective rights of common in the said common lands.

No. VII.
*Agreement for
Division and
Inclosure of
Common Lands.*

7. THAT the said commissioner shall determine all differences and disputes between the said several parties hereto respecting their claims to rights of common, as also between landlords and tenants relating to the inclosures, fencing, and improvement of the allotments in such manner that no tenant or occupier shall be compelled to pay more than £ for every 100*l.* by the year, for any sums of money laid out by his landlord in inclosing, fencing, and improving the same.

*Commissioners
to determine
all differences
as to rights of
common, and
between
landlords and
tenants.*

8. THAT the said commissioner by a certificate in writing under his hand shall authorize and empower tenants for life to mortgage their respective allotments for the raising such sums of money not exceeding the sum of £ per acre, as shall be deemed necessary to defray the incidental expenses of completing the inclosure, as also the costs of such mortgage assurances.

*Tenants for life
authorized
to effect
mortgages to
raise money to
cover expenses
of inclosure.*

9. THAT all allotments made of the said common lands shall be of the same tenure, whether freehold or copyhold, as the case may be, as the lands in respect of which such allotments shall be respectively made; and that nothing herein contained shall in anywise affect or prejudice the right of the said (*lord*), to the royalties, customs, services, and other manorial rights belonging to the said manor, excepting as to the said right of common and the soil therein.

*All allotments
to be of the
same tenure as
the lands in
respect of which
they are allotted
saving the
right of the
lord, except as
to the rights of
common.*

10. THAT all persons who shall have had and exercised the uninterrupted and peaceable enjoyment of rights of common in the said common lands without paying any rent, fine, or pecuniary consideration to the said (*lord*) in respect thereof for twenty years or upwards, shall be deemed to be the exclusive owners thereof.

*Twenty years'
exercise of right
of common to
be deemed
conclusive
evidence of
such right.*

No. VII. notwithstanding such rights might have been originally acquired by incroachments or unlawful inclosure.

*Agreement for
Division and
Inclosure of
Common Lands.*

As to appointment of commissioners, &c.

11. THAT (INSERT *names of commissioner*) shall be appointed the commissioner, and (INSERT *names of surveyor*) shall be appointed the surveyors for the purpose of making the said division and allotment.

Commissioner to execute an award.

12. THAT the said commissioner shall make his award in two parts, one of which shall be lodged in the parish chest in the vestry-room in the parish church of A., and the other shall be inrolled in Her Majesty's Court of Common Pleas at Westminster.

Notice of appeal to be given to all parties.

13. THAT all notices of appeals against the award of the said commissioner, shall be given to all parties interested therein, as well as to the said commissioner by whom the said award shall be made.

Expenses to be paid by lord and persons interested, in proportion to the value of their respective allotments.

14. AND IT IS HEREBY LASTLY AGREED, that the costs of carrying this agreement into execution shall be paid by the said (*lord*), and the several proprietors of rights of common in the said common lands, in proportion to the value of the allotments which shall be so respectively made to them.

IN WITNESS, &c.

No. VIII.

AGREEMENT BY AN INCUMBENT TO GRANT A LEASE OF THE GLEBE LANDS FOR A TERM OF SEVEN YEARS: LESSEE TO KEEP THE CHANCEL, AND ALL BUILDINGS OR DEMISED PREMISES IN PROPER REPAIR, AND NOT TO ASSIGN OR UNDERLET WITHOUT LICENCE.

- | | |
|------------------------------------|-------------------------------------|
| 1. Agreement to let premises for a | 2. Lessor to grant a lease. |
| term of seven years. | 3. Lessee to execute a counterpart. |
-

[INSERT heading, *ut ante*, No. III., clause 1, p. 12.]

1. THE said (*incumbent*) DOTH hereby agree to let, and the said (*lessee*) DOTH hereby agree to take, all the glebe lands belonging to the rectory of the parish of A—— in the said county of D—— (except the timber and timber trees, and the tops and loppings thereof, and the loppings of all other trees), from Lady-day last, for the term of seven years, if the said incumbent shall so long live, at the yearly rent of 150*l.* (without deduction for taxes or otherwise howsoever, except in respect of the landlord's property tax), payable by equal quarterly payments (that is to say), Lady-day, Midsummer, Michaelmas, and Christmas; the first quarterly payment to be made at Midsummer next.

2. AND ALSO, that the said (*incumbent*) will, at the request in writing [and at the costs of the said (*lessee*), his executors, administrators, or assigns] (*a*) execute unto the said (*lessee*), his executors, administrators, and assigns, a lease of the said premises for the said term

(*a*) If the (*lessor*) is to pay for the lease, then substitute for words within brackets—

“And at the costs of the said (*incumbent*)”

No VIII.
 ———
*Agreement by
 an Incumbent to
 grant a Lease of
 the Glebe
 Lands.*
 ———

of seven years, commencing and determinable as aforesaid; which said lease shall contain a covenant for payment of the rent at the usual periods hereinbefore mentioned, and all other usual covenants contained in leases of a like nature; AND in addition thereto shall also contain a covenant from the said (*lessee*), his executors, administrators, or assigns, to keep the chancel of the said parish church of A——, as also all buildings upon the said premises, in proper repair during the said term [the said (*incumbent*) finding sufficient rough timber for that purpose], and to cultivate and manage the said glebe lands according to the most approved rules of good husbandry, and not to assign or underlet the said premises or any part thereof, or permit the same to be occupied by any other person, without the previous consent in writing of the said (*incumbent*); with a proviso for the immediate determination of the said term in case of such assignment, underletting, or permitting the said premises to be so occupied without such licence as aforesaid; or in case of the bankruptcy or insolvency of the said (*lessee*), or on breach or non-performance by him, his executors, administrators, or assigns, of any covenants to be contained in the said lease.

Lessee to execute
 a counterpart.

3. IN CONSIDERATION whereof the said (*lessee*) DOTH hereby agree to execute a counterpart of the said lease whenever the same shall be tendered to him for that purpose; such counterpart to be prepared at the costs of the said (*lessee*.) (*b*)

IN WITNESS, &c.

(*b*) If the lessor is to pay for the counterpart, substitute his name for that of the lessee.

No. IX.

 AGREEMENT FOR SALE OF GROWING TIMBER.—ADDITIONAL
 STIPULATION WHERE THE VENDOR IS TENANT IN TAIL, OR
 FOR LIFE, WITHOUT IMPEACHMENT OF WASTE.

- | | |
|---|--|
| 1. Vendor agrees to sell timber, with liberty to enter, cut down and carry away same.
2. Agreement by purchaser to buy.
3. Purchaser to carry away timber before Michaelmas, and to make compensation for damage done.
4. To repair hedges and fill up saw pits. | 5. Disputes to be referred to arbitration.

<div style="text-align: center; margin: 10px 0;"> <hr style="width: 50px; margin: 0 auto;"/> <i>Additional stipulation.</i> </div> A. If vendor dies before trees are severed, purchaser to be allowed compensation. |
|---|--|
-

[INSERT heading, *ut ante* No. III., p. 12.]

1. THE said (*vendor*), in consideration of the sum of £ sterling, to be paid to him by the said (*purchaser*), and of the agreements hereinafter contained, on the part of the said (*purchaser*), DOTH, by these presents agree to sell unto the said (*purchaser*), ALL the timber and other trees marked out for sale, standing, growing, and being (*HERE set out plantations and places where the timber is growing, the number and description of trees, and the marks which have been set upon the same*), together with the boughs, lops, tops, and the bark thereof; with full and free liberty of ingress, egress, and regress, (*a*) for the said (*purchaser*) his servants, agents, and workmen in, through, over, and upon the said premises, for the purpose

(*a*) The grant of right of entry is inserted rather for the purpose of avoiding disputes in case of the question arising than from any actual necessity for such grant, as by the sale of the trees a right to enter and cut them down and carry them away is implied by law: (11 Co. 52, a.; Finch Law, 63; Plow. Com. 16; Noy's Max. 55, 9th edit.) Practical remarks.

No. IX.

Agreement for
the Sale of
Growing
Timber.—
Additional
Stipulation, &c.

of felling, cutting down, grubbing up, and carrying away the said trees, boughs, tops, lops and the bark thereof; and also to place and dry the bark of the said trees on any convenient part of the said premises; and, also, for any of the purposes aforesaid, to employ horses and carriages, and all other implements which may be necessary, and to make saw-pits, and break up and saw the timber in proper and convenient parts of the said premises, at any time before the 29th day of September next.

Agreement by
purchaser to
buy.

2. IN CONSIDERATION whereof the said (*purchaser*) DOTH, by these presents, agree to pay unto the said (*vendor*), his executors, administrators, or assigns, the sum of £ sterling, without deduction, in manner following, that is to say:—[HERE set out the time and mode in which the payment is to be made.]

Purchaser to
carry away
timber before
Michaelmas,
and to make
compensation
for damage
done.

3. AND ALSO that he the said (*purchaser*), his executors, administrators, or assigns, will fell, cut down, grub up, and carry away the said trees, with the boughs, tops, lops, and the bark thereof, before the 29th day of September next; and in so doing, will do as little injury or damage as possible to the grass, crops, and other property of the said (*vendor*), his heirs or assigns; and will also make compensation to the said (*vendor*), his heirs, or assigns, for all injury or damage so done.

To repair
hedges and fill
up saw pits.

4. AND ALSO shall and will amend and repair all such hedges and fences upon the said premises as shall have been injured or damaged in so felling, cutting down, grubbing up, and carrying away, as aforesaid, upon the said (*vendor*), his heirs, or assigns, supplying proper hedge botes or timber for that purpose; AND ALSO that the said (*purchaser*), his executors, administrators, or assigns, will, within the space of one calendar month next after the said 29th day of September next, at his or their own proper costs, fill up all such saw-pits as shall have been made by him or them, or his or their servants, on any part of the said premises, for the purposes aforesaid.

Disputes to be
referred to
arbitration.

5. AND it is hereby lastly agreed, that in case any dispute shall arise between the said parties thereto, relating to the sale of the said timber, or to the compensation to be made for injury or

damage done in felling, cutting down, grubbing up, and carrying away the same, or any clause, matter, or [thing herein contained, the same shall be finally determined by two indifferent persons, one to be chosen by each of the said parties; and if such two persons shall not agree, then an umpire shall be chosen between them, whose decision shall be conclusive on all parties; and in case either of the said parties shall neglect or fail to appoint a referee within seven days after request by the other party, then the referee by the other party may proceed alone, and his award shall be conclusive on all parties. (b)

No. IX.
—
Agreement for
the Sale of
Growing
Timber.—
Additional
Stipulation, &c.
—

IN WITNESS, &c.

(b) Although tenants for life, without impeachment of waste, and tenants in tail, have the power to cut down and sell timber, yet, unless such timber be severed during the continuance of their estate in the lands, the sale will be void as against the reversioner, who will be entitled to claim all such timber as remains unsevered on his accession to the property on which it grows, without making any compensation whatever to the disappointed purchaser: (Bro. Abr. Contract, 26; *Liford's case*, 11 Co. 50, a.; Hob. 173; Poph. 64; 3 Bac. Abr. 64, in Com. Dig. *Biens*. H.) As a protection against this consequence, where a purchase of timber is effected with a tenant for life without impeachment of waste, or a tenant in tail, a stipulation should always be inserted, to the effect, that if the vendor should die before the severance, the purchaser shall be entitled to compensation; as in the following clause:—

Practical
suggestions.

“AND ALSO that if the said (*vendor*) should happen to die before the said 29th day of September next, and the said (*purchaser*) shall not, at the time of the said vendor's decease, have completed the felling, cutting down, grubbing up, and carrying away the said trees, and the boughs, tops, lops, and the bark thereof, then and in such case the executors or administrators of the said (*vendor*) shall pay or allow unto the said (*purchaser*), his executors, administrators, or assigns, such sum of money, by way of compensation for such injury, as he or they shall thereby sustain; the amount of which shall be ascertained by arbitration or umpirage as aforesaid.”

If vendor dies
before trees are
severed
purchaser to
be allowed
compensation.

PART II.

CONVEYANCES OF FREEHOLD ESTATES, ASSIGNMENTS OF LEASEHOLD PROPERTY, COPYHOLD ASSURANCES, DISENTAILING DEEDS, AND MIXED ASSURANCES.

SECTION I.

CONVEYANCES OF FREEHOLD ESTATES.

- No. I.—CONVEYANCE BY APPOINTMENT AND GRANT, AND RELEASE TO USES TO BAR DOWER, WITH USUAL COVENANTS FOR TITLE.
- No. II. SHORT FORM OF DEED, APPOINTMENT, AND RELEASE TO USES TO BAR DOWER, WITH USUAL QUALIFIED COVENANTS FOR TITLE.
- No. III.—CONVEYANCE BY GRANT AND RELEASE TO A PURCHASER IN FEE WITH USUAL COVENANTS FOR TITLE.
- No. IV.—CONVEYANCE BY WAY OF APPOINTMENT TO USES TO BAR DOWER, WITH USUAL COVENANTS.
- No. V.—CONVEYANCE BY TRUSTEES UNDER A POWER OF SALE CONTAINED IN A WILL, THE HEIR AND LEGATEES CONCURRING.
- No. VI.—CONVEYANCE BY HUSBAND AND WIFE TO A SUB-PURCHASER, THE WIFE CONCURRING TO EXTINGUISH HER DOWER.
- No. VII.—CLAUSES RELATING TO ACKNOWLEDGMENTS BY MARRIED WOMEN.
- No. VIII.—CONVEYANCE IN FEE BY TRUSTEES UNDER POWERS OF SALE CONTAINED IN A MARRIAGE SETTLEMENT.
- No. IX.—RELEASE BY ONE JOINT-TENANT TO HIS COMPANION IN FEE; VARIATION WHERE THE PROPERTY IS TO BE LIMITED TO DOWER USES.
- No. X.—CONVEYANCE IN FEE BY THREE CO-PARCENERS, ONE OF WHOM IS MARRIED AND TWO SINGLE.
- No. XI.—CONVEYANCE IN FEE OF AN ADVOWSON.
- No. XII.—CONVEYANCE OF THE NEXT PRESENTATION TO AN ADVOWSON.
- No. XIII.—CONVEYANCE BY WAY OF FEOFFMENT, WITH POWERS OF ATTORNEY TO GIVE AND DELIVER SEISIN.
- No. XIV.—ENFRANCHISEMENT OF A COPYHOLDER, AND GRANT OF COMMON.

- No. XV.—CONVEYANCE OF TITHES TO USES TO BAR DOWER, WITH USUAL COVENANTS FOR TITLE.
- No. XVI.—CONVEYANCE AND MORTGAGE BY THE SAME INSTRUMENT, WHERE PART OF THE PURCHASE-MONEY IS INTENDED TO REMAIN ON MORTGAGE.
- No. XVII.—CONVEYANCE IN FEE BY VENDOR AND HIS MORTGAGEE, THE LATTER CONCURRING TO SURRENDER A TERM LIMITED TO HIM AS HIS MORTGAGE SECURITY.
- No. XVIII.—CONVEYANCE IN FEE FROM A MORTGAGOR TO A PURCHASER WHO HAS PURCHASED THE MORTGAGE DEBT OF THE MORTGAGEE UNDER A DEMISE, AND OBTAINED AN ASSIGNMENT OF THE MORTGAGE TERM.
- No. XIX.—CONVEYANCE BY A MORTGAGEE TO A PURCHASER UNDER A POWER OF SALE, THE MORTGAGOR CONCURRING THEREIN.
- No. XX.—CONVEYANCE BY MORTGAGEE WITHOUT THE MORTGAGOR'S CONCURRENCE.
- No. XXI.—CONVEYANCE BY HEIR AND EXECUTOR OF A DECEASED MORTGAGEE AND THE OWNER OF THE EQUITY OF REDEMPTION TO A PURCHASER IN FEE.
- No. XXII.—CONVEYANCE BY AN INFANT HEIR AND ADMINISTRATOR OF A DECEASED MORTGAGEE AND THE OWNER OF THE EQUITY OF REDEMPTION TO A PURCHASER IN FEE.
- No. XXIII.—CONVEYANCE TO A PURCHASER IN FEE TO USES TO BAR DOWER BY A TENANT FOR LIFE AND REMAINDER-MAN, PART OF THE CONSIDERATION BEING A RENT-CHARGE LIMITED TO THE TENANT FOR LIFE.
- No. XXIV.—CONVEYANCE WHERE THE ENTIRE CONSIDERATION IS AN ANNUITY OR RENT-CHARGE.
- No. XXV.—CONVEYANCE BY A VENDOR OF LANDS, OF WHICH HE IS SEISED IN FEE, SUBJECT TO A LIMITATION OVER BY WAY OF EXECUTORY DEVISE, THE EXECUTORY DEVISEE CONCURRING FOR THE PURPOSE OF CONFIRMING THE TITLE.
- No. XXVI.—CONVEYANCE OF A REMAINDER IN FEE LIMITED BY WAY OF EXECUTORY DEVISE IN CONSIDERATION OF STOCK TO BE INVESTED IN THE NAMES OF MUTUAL TRUSTEES TO BE TRANSFERRED TO THE VENDOR UPON HIS CONTINGENT ESTATE BECOMING VESTED, OR TO BE TRANSFERRED TO THE PURCHASER IN CASE OF FAILING TO TAKE EFFECT.
- No. XXVII.—CONVEYANCE BY THE ASSIGNEES OF A BANKRUPT TO A PURCHASER IN FEE.
- No. XXVIII.—CONVEYANCE BY THE ASSIGNEES OF AN INSOLVENT DEBTOR.
- No. XXIX.—CONVEYANCE BY THE HEIR AND EXECUTORS OF A VENDOR WHO DIES PENDING THE CONTRACT; VARIATION WHERE HE DIES INTESTATE.
- No. XXX.—CONVEYANCE IN FEE WHERE THE PURCHASE-MONEY IS TO BE PAID BY INSTALMENTS.
- No. XXXI.—CONVEYANCE IN FEE BY MORTGAGEE AND MORTGAGOR TO A PURCHASER OF A PORTION OF THE MORTGAGED PREMISES, THE MORTGAGEE COVENANTING TO PRODUCE THE TITLE-DEEDS.

- No. XXXII.—CONVEYANCE BY HEIR IN TAIL OF ENTAILED ESTATES, DEVISED BY TENANT IN TAIL, THE HEIR IN TAIL ELECTING TO TAKE UNDER THE WILL.
- No. XXXIII.—CONVEYANCE IN FEE BY TRUSTEES UNDER TRUSTS FOR SALE IN A WILL TO A PURCHASER WHO IS BENEFICIALLY ENTITLED TO A PORTION OF THE PROCEEDS OF THE SALE.
- No. XXXIV.—CONVEYANCE IN FEE BY A TENANT FOR LIFE UNDER THE POWERS OF AN INCLOSURE ACT ; VARIATION WHERE THE PROPERTY, IN RESPECT OF WHICH THE ALLOTMENTS ARE MADE, IS OF COPYHOLD TENURE.
- No. XXXV.—CONVEYANCE BY A VENDOR WITH THE CONCURRENCE OF AN ANNUITANT, WHO RELEASES AN ANNUITY CHARGED ON THE PURCHASED LANDS.
- No. XXXVI.—CONVEYANCE WHERE THE SALE IS MADE UNDER A POWER OF ATTORNEY.
- No. XXXVII.—CONVEYANCE UNDER AN ORDER OF THE COURT OF CHANCERY.
- No. XXXVIII.—CONVEYANCE OF AN EQUITY OF REDEMPTION.
- No. XXXIX.—RELEASE OF AN EQUITY OF REDEMPTION FROM MORTGAGOR TO MORTGAGEE.
- No. XL.—CONVEYANCE IN FEE OF CUSTOMARY TENEMENTS HOLDEN OF THE DUCHY OF CORNWALL.
- No. XLI.—CONVEYANCE BY A TENANT BY THE CURTESY OF HIS LIFE ESTATE.
- No. XLII.—CONVEYANCE IN FEE BY WAY OF EXCHANGE.

No. I.

CONVEYANCE BY APPOINTMENT AND GRANT, AND RELEASE TO
USES TO BAR DOWER, WITH USUAL COVENANTS FOR TITLE.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of conveyance to vendor to dower uses. 3. Of agreement to sell. 4. Testatum by which vendor appoints. 5. Further testatum, by which vendor grants and releases. 6. Habendum to purchaser in fee, to uses to bar dower. | <ol style="list-style-type: none"> 7. Declaration to debar widow of dower. 8. Covenant from vendor, that he has good right to convey. 9. For quiet enjoyment, and freedom from incumbrances. 10. For further assurance. |
|--|---|

1. THIS INDENTURE, made the day of A.D. 18 , Parties.
BETWEEN (*vendor*) of, &c., of the first part, (*purchaser*) of, &c., of
the second part, and (*purchaser's dower trustee*) of, &c., of the third
part.

2. WHEREAS by (*a*) [indentures of lease and release bearing date Recital of con-
respectively on or about the 22nd and 23rd days of March in the veyance to
year 1830, the indenture of release being made] between A. B., vendor to dower
Esquire, of the first part, C. D., gentleman, of the second part, uses.
the said (*vendor*) of the third part, and (*vendor's dower trustee*) of
the fourth part, (*b*) the hereditaments and premises hereinafter

(*a*) If the conveyance is made in pursuance of the act which dispenses with
the lease for a year, substitute for words within brackets above—

“Indenture of release in pursuance of the act for rendering a
release as effectual for the conveyance of freehold estates as a lease
and release by the same parties, bearing date the day of ,
and made,” &c.

No. I.

Conveyance by
Appointment
and Grant, and
Release to Uses
to bar Dower.

described, and which are also intended to be hereby appointed, granted, and released, with their appurtenances, were conveyed and assured, and now stand limited to such uses, upon such trusts, and for such ends, intents, and purposes, as the said (*vendor*) shall by deed, or deeds, appoint; and in default of such appointment, and subject thereto, *to the use* of the said (*vendor*) and his assigns for life without impeachment of waste; with a limitation *to the use* of the said (*vendor's trustee*), his executors or administrators, during the life of, and *in trust* for the said (*vendor*) and his assigns; with the ultimate limitation *to the use* of the said (*vendor*), his heirs and assigns for ever.

Of agreement
to sell.

3. AND WHEREAS the said (*vendor*) has contracted to sell the said hereditaments and premises, and the inheritance thereof in possession in fee-simple, free from incumbrances, to the said (*purchaser*) for the sum of 3,000*l*.

Testatum by
which vendor
appoints.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 3,000*l*. sterling paid by the said (*purchaser*) to the said (*vendor*) on the execution of these presents, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release and for ever discharge the said (*purchaser*), his heirs, executors, administrators, and assigns, HE the said (*vendor*), in exercise of the power reserved to him by the said hereinbefore recited indenture of release, DOTH by this present deed appoint that all and singular the hereditaments and premises hereinafter described, and which are also intended to be hereby granted and released, with their appurtenances, shall from henceforth be to the uses, upon the trusts, and for the ends, intents, and purposes hereinafter limited, expressed, and declared.

Further testa-
tum by which
vendor grants
and releases.

5. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said contract, and for the considerations aforesaid, the said (*vendor*) DOTH (*c*) by these presents grant, release, and confirm unto the said (*purchaser*) and his heirs, ALL (HERE *describe*

Practical
remarks.

(*b*) There is no necessity to make the vendor's dower trustee a party, as the estate the latter takes is really no more than a remainder during the vendor's life expectant on the forfeiture of his life estate.

the parcels), together with all [and singular houses, (*d*) out-houses, edifices, buildings, barns, stables, yards, gardens, orchards, ways, paths, passages, waters, water-courses, sewers, gutters, drains, timber and other trees, woods, underwoods, and the ground soil thereof; commons, common of pasture and of turbary, and all other commonable rights, whatsoever; hedges, ditches, fences, mounds, bounds, liberties, lights, easements], rights, members, and appurtenances to the said hereditaments and premises belonging or appertaining, or usually held, occupied, or enjoyed therewith; (*e*) AND all the estate, right, title, and interest, both legal and equitable, of him the said (*vendor*) therein. AND ALSO all deeds, (*f*) evidences, and writings,

No. I.

Conveyance by Appointment and Grant, and Release to Uses to bar Dower.

All-estate clause.

All-deeds clause.

(*c*) It was, until lately, the general practice in conveyances to speak in the past as well as the present tense, as "HATH granted, &c., and by these presents DORR grant," &c.; but this is not in accordance with the fact, as nothing has passed, or can pass, to the grantee by grant or release, until the delivery of the deed. This long-continued error arose, and was perpetuated by adopting analagous operative expressions in a conveyance under the Statute of Uses, that were properly adapted to a feoffment; but from which they materially differ. A feoffment takes effect by the delivery of the possession by livery of seisin, of which the deed or charter of feoffment is the evidence, and therefore it is perfectly correct that this instrument should speak of an act previously done, of which it is to form the record, and to state that the feoffor "HATH granted and infeoffed," and by the then present assurance "DORR confirm," &c.; but a deed, operating by transmutation of possession under the Statute of Uses, passes nothing until the execution of the deed; and hence the impropriety of speaking in the past tense is apparent, as it states an act to have been already done, which could not possibly have been performed.

Remarks upon the granting clause.

The words "bargain," "sell," were also generally used in releases; but where the assurance is intended to operate as a release, it will be more correct to omit the words, "bargain" and "sell," which, strictly speaking, are applicable to a different kind of assurance, viz., a bargain and sale enrolled.

The words "bargain and sell," not strictly speaking applicable to conveyances by grant and release.

(*d*) If brevity is desirable, the whole of the general words within brackets above may be safely omitted.

(*e*) It is now become a very usual practice to omit the reversion clause, which merely adds to the length of the instrument without effecting any useful purpose, being considered rather a formal, than an essential part of a conveyance. The all-estate clause in all well-penned instruments ought only to be inserted when the assurance is intended to pass all the grantor's interest in the lands, and consequently should be omitted where a limited interest only is intended to be conveyed; as, where a tenant in fee-simple conveys to a third party for the term of his life only, or for a term of years, or any other lesser estate than the fee itself. It is also inapplicable to the character of a feoffment, livery being made of the possession, and not of the estate of the feoffor: (1 Hughes Pract. Sales, 281.)

Reversion clause.

(*f*) In conveyances of estates of inheritance, it is not absolutely necessary to grant the title deeds in order to pass them to the purchaser, as they will pass as incidental to his purchase, and appertaining to the inheritance (*Harper v. Foulder*, 4 Mad. 129; *Wiseman v. Westland*, 1 You. & Jerv. 117), unless the vendor retains them in his hands, as relating to other estates belonging to him, or has entered into covenants for their production to third parties, or, according to the old authorities, where a feoffor has entered into general warranty, who, in such

All-deeds clause.

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Conveyance by
Appointment
and Grant, and
Release to Uses
to bar Dower.

Habendum to
purchaser in fee
to uses to bar
dower.

relating to the title thereof, in the possession of the said (*vendor*), or which he can obtain without suit.

6. TO HAVE AND TO HOLD the said (*short general description*) and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs, to the uses, upon the trusts, and for the ends, intents, and purposes hereinafter limited and declared (that is to say), (*g*) TO SUCH USES, upon such

case would have been justified in retaining his title-deeds, in order to enable him to defend the title he has thus warranted. But, notwithstanding a purchaser will, generally speaking, be entitled to the custody of the deeds without any express grant of them, it will always be advisable to insert the clause, and thus prevent the possibility of any question being raised upon the subject.

Practical
remarks upon
limitations to
uses to bar
dower.

Origin of dower
uses.

Old plan of
limiting the
estate in joint
tenancy.

Party becoming
solely seised by
survivorship,
right of dower
would attach.

Trust estate
limited to pur-
chaser will
prevent dower
from attaching.

Of limitations
by which pur-
chaser was
empowered to
defeat his wife's
dower by
making an
appointment.

(*g*) In modern conveyances to purchasers, the property is usually limited, either simply to the grantee in fee, or to dower uses. When the former course is adopted, the usual words are "TO HAVE AND TO HOLD the said messuages, &c., unto the said A. B., and his heirs, to the only proper use and behoof" or "to the use" of the said A. B., his heirs and assigns for ever," or "TO HAVE AND TO HOLD the said messuage unto and to the use of the said A. B., his heirs and assigns for ever": but either form will have precisely the same operation.

The unalienable right of dower which formerly attached on a conveyance of lands, and which in fact still attaches as to the lands of husbands married previously to the year 1834, being found a clog upon the free alienation of property, it was deemed expedient to adopt some plan by which this impediment might be removed. The first method resorted to (and which though now obsolete has not long been discontinued) was to limit the estate to the purchaser and his trustee as joint tenants in fee, but declaring that the latter held only as a trustee for the purchaser, by which means the wife's dower was prevented from attaching during the continuance of the joint-estate of the purchaser and his trustee (Litt. s. 45; Co. Litt. 37, b.: Bro. 4, 84; Perk. 334; *Broughton v. Bandall*, Cro. Eliz. 502; *Amcoth v. Catherick*, Cro. Jac. 615; *Sneyd v. Sneyd*, 1 Atk. 442); but it was still liable to attach on the death of the trustee in the husband's lifetime, as the husband would then have become solely seised. The inconvenience resulting from this gave rise to the practice of limiting the lands "to the purchaser and his trustee, and the heirs of the trustee," or immediately to the trustee and his heirs in trust for the purchaser and his heirs (*Curtis v. Curtis*, 2 Bro. C. C. 620), in both of which cases the legal seisin of the husband was prevented by the creation of the trust; but, notwithstanding the last objection was obviated by this mode, it was still open to other objections. It kept the legal estate from the purchaser, and exposed him to the possibility of its escheating to the Crown for want of heirs of the trustee, or to the inconvenience of its becoming vested in infants, married women, or persons residing at a distance, not easily discoverable, or not willing to join in the conveyance required to be made of it: (Co. Lit. 379, b. n. 1.) To prevent all these troublesome consequences, a mode of limitation was next introduced by which a right of dower was permitted to attach upon the estate, but subject to be divested by the act of the husband in his lifetime. This was effected by limiting the property to such uses as the husband should appoint, and, in default of appointment, to the use of his right heirs (Co. Litt. 216, a. n. 2.) Until this power was exercised by the husband, he was actually seised of an estate of inheritance in possession on which the right of dower attached, but upon his making the appointment, it was considered, that, as the

trusts, and for such ends, intents, and purposes, as the said (*purchaser*) shall from time to time, or at any time, by deed or deeds

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to bar Dower.

appointee came in as if named in the deed creating the power, he was in paramount to the right of dower in the wife, and consequently held the estate discharged from her claims thereto. Considerable doubts, however, appear to have been at one time entertained as to the efficacy of this mode of limitation, upon the principle that, the right of dower having once attached, it could not be defeated by the act of the husband alone : (*Cox v. Chamberlain*, 4 Ves. 637; *Maundrell v. Maundrell*, 7 ib. 567.) It is, however, now clearly settled that the husband, by exercising his power, can wholly bar his wife's claim to dower. (*Maundrell v. Maundrell*, 10 Ves. 246; *Rae v. Pung*, 5 B. & A. 561; S. C. 5 Madd. 561; *Moreton v. Lees*, cited 5 Madd. 318; *Doe v. Jones*, 10 B. & C. 459.) Still this mode of limitation is not always to be depended on. The power of appointment is liable to be suspended and destroyed, and as its existence is the only circumstance which precludes the wife from her dower, there must always be a possibility of danger (though perhaps sometimes so small as scarcely to deserve attention) in taking a title which depends upon it: (Co. Lit. 216, b. a. n. 2.) At length a method was found out by which all the advantages of the former modes were secured, and all the inconveniences removed. This was the form of dower uses now commonly inserted in conveyances, by which the property is limited to such uses as the purchaser shall appoint (which gives him a power of disposition over the whole fee, and if he exercises it, the appointee will be in under the original conveyance, and so paramount to the claims of the wife); and in default of appointment to the use of the purchaser for life, with remainder, in case of the determination of the purchaser's life estate, to his dower trustee during the life of the purchaser, with the ultimate remainder to the purchaser in fee; which ultimate remainder, by the interposition of the limitation, is an estate in remainder, upon which no right of dower in the wife could possibly attach: (Butl. note to Co. Lit. 379, Fearné C. R. 347.)

Mode of limiting
estates to uses
to bar dower.

In uses to bar dower, the lands are sometimes limited to such uses as the purchaser shall, by deed sealed and delivered by him in the presence of, and attested by, two or more credible witnesses, or by his last will or testament in writing, signed and published by him in the presence of a specified number of witnesses, appoint. One of our most celebrated text-writers (the late Mr. Butler), however, very properly observes, that no good reason can be assigned for requiring any specific number of witnesses to the execution of the deed by which the power is to be executed, it being quite sufficient to state that the power is to be executed by deed generally. It is also unnecessary to extend the power to testamentary dispositions, for, as the will does not take effect until the purchaser's death, when the trustee's estate ceases, the power is not wanted for the purpose of overriding his estate; and the interposed estate of the trustee prevents the dower from attaching at all during the life of the purchaser, and on his decease, his heir and devisees would take exempt from the dower. The power of devising by will (the same learned writer continues to observe), is, therefore, useless; but it is attended with this inconvenience, that it sometimes gives rise to nice questions, whether the disposition operates as a devise of the land, or as an appointment of the use, and thus makes it doubtful in whom the legal estate is vested. For this reason, he says, it seems advisable to omit wholly out of the clause the power of devising by will: (See Butl. note to Fearné C. R. 437.) The earlier practice in framing limitations of this kind was to limit the interposed estate to the dower trustee and his heirs; but the modern plan, generally, is to make the limitation to his executors and administrators, it being in general more easy to find and obtain the concurrence of a personal representative than an heir, the former of whom is also less liable to be labouring under legal disability, though as such estates are not often required to be conveyed, little practical inconvenience is likely to result for want of the concurrence of either the dower trustee or his representatives, so that it is not very material what

How the power
of appointment
is usually
framed in
modern dower
uses.

As to the mode
of limiting the
estate of the
dower trustee.

No. I. with or without power of revocation or new appointment, direct, limit or appoint; and in default of, or until such direction, *Conveyance by Appointment, and Grant, and Release to Uses* limitation or appointment, and subject thereto, TO THE USE of the said (*purchaser*) and his assigns, during the term of his natural life, without impeachment of waste; and after the determination of that estate, by any means in his lifetime, TO THE USE of the said (*dower trustee*), his executors or administrators, during the life of the said (*purchaser*), in trust for him and his assigns; and after the determination of the said hereinbefore lastly limited estate, TO THE USE of the said (*purchaser*), his heirs and assigns for ever.

Declaration to
debar widow of
dower.

7. AND it is hereby declared, that no widow of the said (*purchaser*) shall be entitled to dower out of the said hereditaments and premises.

Covenant from

8. AND the said (*vendor*) doth hereby for himself, his heirs,

mode of limitation is annexed to his estate. With respect to the ultimate limitation Mr. Butler suggests (see his note to Fearné C. R. 435), that as a life estate is first limited to the party, it seems more accurate to limit the fee to his heirs and assigns, and not to the party, his heirs and assigns. This, Mr. Hayes pronounces to be at once theoretically wrong and practically dangerous, depending, as he truly observes, upon the rule in *Shelley's case*, which, in some instances might not be applicable, particularly in the case of limitations differing in quality, as where the one is legal and the other equitable. In most modern conveyances we certainly find a preference given to the limitation to the purchaser, his heirs and assigns, to the form recommended by Mr. Butler, though, as far as conveyances to purchasers are concerned, it can rarely happen that the latter may not be safely adopted.

Dower uses
rendered less
necessary in
many instances
than formerly.

Dower uses are not so necessary now as formerly; because, since the Dower Act, 3 & 4 Will. 4, c. 105, all men who were unmarried previously to the year 1834 may debar their wives of their dower by conveying away the property upon which right of dower would otherwise attach which, unless protected by dower uses, the husband could not have done previously. Nor will the dower uses be sufficient to exclude a widow married after 1834, but which may, nevertheless, be effected by a declaration made by the husband in the purchase-deed, and which is usually done immediately after the limitation of the uses, as in the above Precedent: (see *clause 7*.) And where a purchaser has been married previously to 1834, the usual mode is to limit the lands to dower uses, so as to bar the dower of the present wife, and to superadd a declaration to bar the dower of any other woman with whom he may happen to intermarry at any future time; (see *the Form, sup., clauses 6, 7*.) It has been, indeed, suggested that even if limitations to bar dower should be rendered unnecessary by the Legislature, the power of appointment should still be retained on account of the protection it affords against judgments; for, although this protection will only be allowed in favour of a purchaser who has no notice of the judgments which has brought this protection within far more narrow limits than formerly: (stat. 1 & 2 Vict. c. 110) still the clause confers sufficient advantages to allow it to retain its place in purchase-deeds.

executors and administrators, covenant with the said (*purchaser*) and his heirs, that (notwithstanding any act or thing done or permitted by the said (*vendor*) to the contrary) (*h*) the said (*vendor*) now hath in himself full power to appoint, grant, and release the said hereditaments and premises to the uses and in manner aforesaid, according to the true intent and meaning of these presents.

No. I.

Conveyance by
Appointment
and Grant, and
Release to Uses
to bar Dower.

vendor that he
has good right
to convey.

9. AND ALSO that (notwithstanding any such act or thing as aforesaid) the said hereditaments and premises shall from time to time, and at all times, be peaceably and quietly held and enjoyed, according to the uses hereinbefore declared concerning the same, without let, suit, eviction, ejection, interruption, molestation, or denial, from or by the said (*vendor*), or any other person or persons whomsoever rightfully claiming under or in trust for him. (*i*)

For quiet
enjoyment.

(*h*) Generally speaking, a vendor of real property can only be required to enter into qualified covenants, that he is seised in fee; that he has good right to convey; for quiet enjoyment; for freedom from incumbrances; and for further assurance. Where, however, a vendor takes by descent, or derives his title through a will, the purchaser is entitled to have the covenant extended to the acts of his ancestor or testator; for, if restricted to the acts of the vendor, and those claiming under him, although these covenants would comprehend a claim of his own wife to dower, it would not effect a similar claim of the widow of a preceding ancestor or testator; or, in fact, any other incumbrances attaching on the property through the medium of such ancestor or testator. (See covenants for title in this Form, *infra*, No. III., clause 5, p. 50.)

Practical
observations
upon the usual
covenants
required from
vendor.

It was formerly the practice to commence the covenants for title by a covenant from the vendor that he was seised in fee, but this covenant is now generally omitted, the covenants usually commencing,—that the vendor, and all other conveying parties, have good right to convey.

(*i*) This covenant, it must be remembered, is only to operate as an indemnity against lawful title: (Year Book, 26 Hen. 8, 36; see also 26 Hen. 6, 52, b. pl. 20; F. N. B. 342; *Darrie v. Suchevertall*, 1 Roll. Abr. Condition, v. pl. 7; *Hayes v. Bickerstaff*, Vaugh. 119; *Dudley v. Folliott*, 3 T. R. 584; *Crosse v. Young*, 2 Show. 425.) And this rule holds equally whether the covenants be unlimited or restricted to the acts of certain persons mentioned in the deed; for it would be a most unreasonable construction to make this covenant extend to any illegal act which the folly or malice of strangers might suggest, and for which the law otherwise affords a remedy; added to which, it would not only allow a purchaser a double remedy for the same injury, but also enable him to procure a stranger to make a tortious entry, that he might charge the covenantor with an action. It will be otherwise, however, if a vendor undertakes to covenant against the acts of any particular individual; for there, as he is presumed to know the person against whose acts he has undertaken to covenant, he will, consequently, be liable for any disturbance occasioned by such individual, whether in assertion of a rightful claim or otherwise: (*Foster v. Mopes*, Cro. Eliz. 212; *Nash v. Palmer*, 5 M. & Selw. 374.) And any act done by the vendor himself, asserting a title whether rightfully or wrongfully, will be a breach of covenant, although he only covenanted against rightful claims and disturbances: (*Lloyd v. Tomkies*, 1 T. R. 671; *Forte v. Vine*, 2 Roll. Rep. 19.) The act must,

Covenant for
quiet enjoyment
is restricted to
an indemnity
against persons
claiming under
lawful title.

No. I. *And that* freely, clearly, and absolutely indemnified by the said (*vendor*), his heirs, executors, or administrators, of, from, and against all former and other estates, rights, titles, liens, charges and incumbrances whatsoever, made, created, occasioned, or suffered by the said (*vendor*), or any other person or persons whomsoever rightfully claiming under or in trust for him, or by or through his acts, deeds, default, privity, or procurement.

Conveyance by Appointment and Grant, and Release to Uses to bar Dower.

Freedom from incumbrances.

For further assurance.

10. AND MOREOVER, that the said (*vendor*), and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises hereby granted and released, or any part thereof, under or in trust for him, will from time to time, and at all times hereafter, at the request and costs of the said (*purchaser*), his appointees, heirs or assigns, enter into, execute, and perfect all such further acts, deeds, conveyances, and assurances whatsoever, for the further, better, or more perfectly or satisfactorily appointing, granting, releasing, and confirming, or otherwise assuring the said hereditaments and premises, and every or any part of the same, with their appurtenances, to the uses aforesaid, according to the true intent and meaning of these presents, as the said (*purchaser*), his appointees, heirs, or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed. (*k*)

however, be done in the assertion of a title; for an entry on the property for the purpose of committing an assault upon the purchaser (*Penn v. Glover*, Cro. Eliz. 421), or going sporting over the property (*Seddon v. Senate*, 13 East, 72), will not be construed as acts amounting to a breach of covenant for peaceable enjoyment. But, notwithstanding a contrary doctrine once prevailed (*Selby v. Chute*, Mos. 859; 1 Roll. Abr. 430, pl. 15), it is now settled that a suit in equity, by which a purchaser is disturbed, will come within the covenant against disturbances generally: (*Calthorpe v. Hayton*, 2 Mod. 54; *Hunt v. Danvers*, T. Raym. 276.)

Whether, under the usual covenants for further assurance, a purchaser can require a covenant for the production of title deeds. (*k*) It does not appear to have been positively determined by any legal decision, whether, under the usual covenant for further assurance, a purchaser who had not obtained the title deeds, or a covenant for their production, could require a covenant to that effect to be executed to him. In *Fain v. Ayers* (2 Sim. & Stu. 533), the question certainly arose, but it seems the point was not decided. The prevailing opinion, however, amongst the profession seems to be, that a vendor has no such right; for that the covenant for further assurance appears to be restricted to an assurance by way of conveyance, and not to comprehend further obligations, to be imposed by the covenantor by way of covenant: (*Hallet v. Middleton*, 1 Russ. 243.) Whenever, therefore, the title deeds are retained by the vendor, the purchaser should require him to enter into a

IN WITNESS whereof the said parties to these presents their hands and seals have set the day and year first above written.

No. 1.

*Conveyance by
Appointment
and Grant, and
Release to Uses
to bar Dower.*

covenant for their production, otherwise he may find it difficult to produce such a title as a subsequent purchaser or mortgagee could be compelled to accept: (See forms of covenants for the production of title deeds, *infra*, No. V., clause 9, p. 62; No. X., clause 9, p. 77.)

No. II.

SHORT FORM OF DEED OF APPOINTMENT, AND RELEASE TO
USES TO BAR DOWER, WITH USUAL QUALIFIED COVENANTS
FOR TITLE.

- | | |
|--|--|
| 1. Parties.

2. Recital of limitation to vendor to uses to bar dower.

3. Of contract to purchase.

4. Testatum. | 5. Habendum, and limitation to uses to bar dower.

6. Covenant from vendor that he has good right to convey.

7. For quiet enjoyment and freedom from incumbrances.

8. For further assurance. |
|--|--|
-

Parties.

1. THIS INDENTURE, made the day of A.D., 18 ,
BETWEEN, &c. [*continue description of parties, as in last precedent.*]

Recital of
limitation to
vendor to uses
to bar dower.

2. WHEREAS by indentures of lease and release dated respectively the and days of , the indenture of release being made between A. B. Esquire, of the first part, the said (*vendor*) of the second part, and (*vendor's dower trustee*) of the third part, the hereditaments and premises hereinafter described, are limited to such uses as the said (*vendor*) shall by deed appoint; and in default of such appointment, TO THE USE of the said (*vendor*) and his assigns for life, without impeachment of waste, with a limitation TO THE USE of the said (*vendor's dower trustee*), his executors or administrators, during the life of the said (*vendor*), IN TRUST for him and his assigns; with the ultimate limitation TO THE USE of the said (*vendor*) his heirs and assigns for ever.

Of contract to
purchase.

3. AND WHEREAS the said (*vendor*) has contracted to sell the fee simple in possession of the said hereditaments and premises to the said (*purchaser*), free from incumbrances, for the sum of £ .

4. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £ sterling, this day paid by the said (*purchaser*) to the said (*vendor*), the receipt of which the said (*vendor*) hereby acknowledges, and therefrom releases the said (*purchaser*) his heirs, executors, administrators, and assigns, HE the said (*vendor*), in exercise of the power limited to him by the said hereinbefore recited indenture of release, DOTH by this deed irrevocably appoint that the hereditaments and premises hereinafter described, shall from henceforth be and enure to the uses hereinafter declared; and by way of further assurance, DOTH by these presents grant, release, and confirm unto the said (*purchaser*) and his heirs, ALL, &c. (DESCRIBE *parcels*.) [INSERT *general words, all-estate clause, and all-deeds clause*, as in clause 2, last precedent.]

No. 11.

Short Form of
Deed of
Appointment,
and Release
to Uses to bar
Dower.

Testatum.

5. TO HAVE AND TO HOLD the said (*short general description*) and all and singular other the premises hereinbefore described, and hereby granted and released, with the appurtenances, unto the said (*purchaser*) and his heirs, TO SUCH USES as the said (*purchaser*) shall at any time or times by deed appoint; and in default of such appointment, to the use of the said (*purchaser*) and his assigns for for the term of his natural life, without impeachment of waste, and after the determination of that estate by any means in his lifetime, TO THE USE of the said (*dower trustee*) his executors or administrators during the life of the said (*purchaser*), IN TRUST for him and his assigns; and after the determination of the said hereinbefore lastly limited estate, TO THE USE of said (*purchaser*) his heirs and assigns for ever, [INSERT *declaration to bar dower, ut ante*, No. I., clause 4, p. 48.]

Habendum and
limitation to
uses to bar
dower.

6. AND the said (*vendor*) doth hereby for himself, his heirs, executors, or administrators, covenant with the said (*purchaser*) his heirs and assigns, that (notwithstanding any act done or permitted by the said (*vendor*) to the contrary), he the said (*vendor*) now hath in himself good right to convey the said hereditaments and premises hereby granted and released to the uses hereinbefore declared.

Covenant from
vendor that he
has good right
to convey.

7. AND ALSO that (notwithstanding any such act as aforesaid), the same hereditaments and premises shall or may, from time to

For quiet
enjoyment and
freedom from
incumbrances.

No. II. time, and at all times, be held and enjoyed accordingly, without let,
Short Form of suit, eviction, denial, or disturbance of or by the said (*vendor*), or
Deed of any person rightfully claiming under or in trust for him, free from
Appointment, all incumbrances created or suffered by the said (*vendor*) or any
and Release person rightfully claiming under or in trust for him.
to Uses to bar
Dower.

For further
assurance.

8. AND MOREOVER that the said (*vendor*) and all persons rightfully claiming any estate or interest in the said hereditaments and premises, under or in trust for him, will, from time to time, and at all times, at the request and costs of the said (*purchaser*) his appointees, heirs, or assigns, execute all such further assurances, for the further or more perfectly or satisfactorily assuring and confirming the said hereditaments and premises hereby granted and released, to the uses hereinbefore declared concerning the same, as the said (*purchaser*), his appointees, heirs, or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

IN WITNESS, &c.

No. III.

CONVEYANCE BY GRANT AND RELEASE TO A PURCHASER IN
FEE, WITH USUAL COVENANTS FOR TITLE.*(A very concise Form.)*

- | | |
|--|---|
| 1. Parties.

2. Testatum by which vendor grants
and releases.

3. Habendum to purchaser in fee. | 4. Covenant from vendor that he
has good right to enjoy.
5. For quiet enjoyment, and free-
dom from incumbrances.
6. For further assurance. |
|--|---|

1. THIS INDENTURE, made the day of A.D., 18 , Parties.
BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*), of,
&c., of the other part.

2. WITNESSETH that in consideration of £ sterling, this day Testatum by which vendor grants and releases.
paid by the said (*purchaser*) to the said (*vendor*), the receipt of which
the said (*vendor*) hereby acknowledges, HE the said (*vendor*) DOTH
by these presents grant and release unto the said (*purchaser*) and
his heirs, ALL, &c. (HERE DESCRIBE *parcels*) and all rights,
members and appurtenances to the said premises belonging, AND
all the estate and interest, both legal and equitable, of him the
said (*vendor*) therein; AND all deeds and writings relating to the
title thereof, in the custody of the said (*vendor*), or which he can
procure without suit.

3. TO HAVE AND TO HOLD the said (*short general description*), Habendum to purchaser in fee.
and all and singular other the premises hereinbefore described, and
hereby granted and released, with their appurtenances, unto and
to the use of the said (*purchaser*), his heirs and assigns for ever.
[INSERT *declaration to bar dower*, *ut ante*, No. I., clause 7, p. 48.]

No. III.

*Conveyance by
Grant and
Release to a
Purchaser in
Fee, with usual
Covenants for
Title.*

Covenant from
vendor that he
has good right
to convey.

4. AND the said (*vendor*) doth hereby for himself, his heirs, executors, or administrators, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act done or permitted by the said (*vendor*) [or any of his ancestors or testators] (*a*) to the contrary) the said (*vendor*) now hath good right to convey the said hereditaments and premises hereby granted and released [unto and to the use of the said (*purchaser*), his heirs and assigns] (*b*) in manner aforesaid.

For quiet enjoy-
ment and free-
dom from
incumbrances.

5. AND ALSO that the same hereditaments and premises shall be held and enjoyed accordingly, without let, suit, eviction, or disturbance, by the said (*vendor*), or any other person whomsoever rightfully claiming under him, *And that* free from all incumbrances whatsoever, created or occasioned by him [or any of his ancestors or testators,] (*a*) or any other person whomsoever rightfully claiming under him or them.

For further
assurance.

6. AND MOREOVER that the said (*vendor*) and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises under or in trust for him, shall and will, from time to time, and at all times, at the request and costs of the said (*purchaser*), his heirs or assigns, execute all such further assurances for the more perfectly or satisfactorily assuring the said hereditaments and premises [unto and to the use of the said (*purchaser*), his heirs and assigns,] (*b*) as the (*purchaser*), his heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

IN WITNESS, &c.

(*a*) If the vendor himself purchased the property he now conveys, the words within brackets above must be left out.

(*b*) If the premises are limited to uses to bar dower, substitute for words within brackets, "to the uses hereinbefore limited."

No. IV.

CONVEYANCE BY WAY OF APPOINTMENT TO DOWER USES,
WITH USUAL COVENANTS FOR TITLE. (a)

(A very concise Form.)

- | | |
|--|---|
| <p>1. Parties.</p> <p>2. Testatum, by which vendor appoints the premises to dower uses; and declaration to debar widow of dower.</p> | <p>3. Covenant from vendor that power is still subsisting.</p> <p>4. That vendor has good right to appoint.</p> |
|--|---|

1. THIS INDENTURE, made the day of A.D., 18 , Parties.
BETWEEN (*vendor*) of, &c., of the first part, (*purchaser*) of, &c., of
the second part, and (*purchaser's dower trustee*) of, &c., of the
third part. [INSERT *recital of deed creating power, as in No. I.*,
clause 2; ALSO *of agreement to purchase, ut ib.* clause 3.]

2. NOW THIS INDENTURE WITNESSETH, that in consideration
of the sum of 500*l.* sterling, this day paid by the said (*purchaser*)
to the said (*vendor*), the receipt of which the said (*vendor*) hereby
acknowledges, HE the said (*vendor*), in execution of the power

Testatum, by which vendor appoints the premises to dower uses.

(a) A conveyance by way of appointment was often found useful in small Practical purchases, as no lease for a year-stamp was required in this mode of assurance. Its disadvantages are, that the conveyance may be endangered on account of the deed not being made and executed in pursuance of the terms of the power; and secondly, it is at least doubtful whether the covenants for title, entered into with the vendor, will run with the lands. A little care and attention on the part of the purchaser's solicitor can easily obviate the first disadvantage, but the other objection is not so easily disposed of. The reason assigned for the covenants not running with the land is, that the purchaser coming in under the deed creating the power, and not under the party exercising it, the former claims by a title paramount to, and independently of, the latter, and, therefore, for want of privity of estate, the appointee cannot claim the benefit of covenants entered into with the donee of the power: (*Roach v. Wadham*, 6 East, 249.)

The statute 13 & 14 Vict. c. 97, now dispenses with the stamp duty on a lease for a year, upon a deed of grant and release, and the advantages of the latter mode of assurance over a simple deed of appointment are such, that there can be little doubt the latter mode of assurance will grow into disuse.

upon conveyances by way of appointment.

No. IV.

Conveyance by
way of Appoint-
ment to Dower
Uses, with usual
Covenants for
Title.

limited to him by the said hereinbefore recited indenture, DOTH by this deed irrevocably appoint that ALL, &c. (HERE DESCRIBE parcels,) with their appurtenances, shall from henceforth be (a) TO SUCH USES as the said (*purchaser*) shall from time to time, or at any time, by deed or deeds appoint; and in default of such appointment, and subject thereto, TO THE USE of the said (*purchaser*) and his assigns for the term of his natural life, without impeachment of waste; and after the determination of that estate by any means in his lifetime, TO THE USE of the said (*purchaser's dower trustee*), his executors and administrators, during the life of, and IN TRUST for, the said (*purchaser*) and his assigns; and after the determination of the said hereinbefore lastly limited estate, TO THE USE of the said (*purchaser*), his heirs and assigns for ever. AND it is hereby declared that no widow of the said (*purchaser*) shall be entitled to dower out of the said hereditaments and premises.

Declaration to
debar widow
of dower.

Covenant from
vendor that the
power is still
subsisting.

3. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that notwithstanding any act done by him the said (*vendor*) to the contrary, the said recited power is a valid and subsisting power.

That vendor has
power to
appoint.

4. ALSO that (notwithstanding any such act as aforesaid) the said (*vendor*) now hath full power to appoint the said hereditaments and premises to the uses and in manner aforesaid. [ADD covenants for quiet enjoyment, freedom from incumbrances and for further assurance, as in last precedent, clauses 6 and 7.]

IN WITNESS, &c.

Practical
observations.

(a) Where the property, which is the subject of appointment, is intended to be limited to dower uses, it will be improper to appoint to the purchaser in fee in the first instance, as this would vest the use in him under the Statute of Uses, and convert all limitations to arise out of his seisin into mere equitable estates; estates, in fact, that would be absolutely void at law, upon the principle that a use cannot be limited on a use, although supported as trusts in equity. If the limitation to the purchaser is to be simply in fee, then substitute for the remainder of the above clause a limitation in the following words, viz.:

“TO THE USE of the said (*purchaser*), his heirs and assigns, for ever.”

No. V.

CONVEYANCE BY TRUSTEES UNDER A POWER OF SALE
CONTAINED IN A WILL, THE HEIR AND LEGATEES (a)
CONCURRING.

- | | |
|---|---|
| 1. Parties. | 6. Covenant from trustees that they have done no act to incumber. |
| 2. Recital that testator has devised to trustees upon trust to sell. | 7. Covenants for title &c., from heir. |
| 3. Of testator's death. | 8. Recital that title deeds relate to other property. |
| 4. Of contract to purchase. | 9. Covenant from trustees for the production of title deeds. |
| 5. Testatum, by which trustees convey, legatees release, and heir confirms. | |
-

1. THIS INDENTURE, made the day of A.D., 18 , Parties.
BETWEEN (*trustee*), of, &c., of the first part, (*heir*), (*a*) of, &c.,
of the second part, (*legatees*), of, &c., of the third part, (*purchaser*),

(a) It is not necessary that the heir or legatees should be made parties to this conveyance; still the usual practice is to make them concur, for the purpose of showing their knowledge and approval of the transaction: neither is it necessary to set out and specify the legacies in the recitals. Where real estate is devised for purposes of this kind, the purchaser is in nowise bound to see that the legacies are paid; nor is he in fact responsible as to the manner in which the purchase-money is to be applied; still, where the will does contain a clause exonerating purchasers from all responsibility with respect to the application of the purchase-money, it is always satisfactory that this clause should appear upon the recitals. In the case of devises for the payment of debts, also, there is no necessity for making the creditors parties (*Humble v. Bill*, 1 Eq. Ca. Abr. 345; *Anon. Mose.* 96; *Newell v. Ward*, Nels. Cha. Rep. 38; *Elliott v. Merryman*, Barnardist. 78; S. C. 3 Atk. 41; Ambl. 189, in margin; *Burly v. Ekins*, 7 Ves. 323; *Barker v. Duke of Devonshire*, 3 Mer. 310; *Shaw v. Borrer*, Kee. 599; *Ball v. Horris*, 8 Sim. 485; S. C. 4 Myl. & Cra. 264; *Robinson v. Lowater*, 23 Law T. Rep. 85; *Smith v. Guyon*, 1 Bro. C. C. 186; *Williamson v. Curtis*, 3 ib. 96; 3 Prest. Abs. 360; 1 Hughes on Sales, 230). unless such debts are set out in the will, or specified, or scheduled; for this, in the absence of an express clause of indemnity, will render purchasers responsible for the application of the purchase-money, who are bound to see it applied in liquidation of those charges, and, in such case, the creditors ought to be made parties to the purchase-deed, not only for the purpose of releasing their claims, but also to afford evidence at any future time that those claims have been satisfied: (*Page v. Adams*, Rolls, July 30, 1841, 10 L. T. 107.) These observations do not, however, apply to leasehold estates sold by executors in that character, they being by law intrusted with a power of converting the

No. V. of, &c., of the fourth part, and (*dower trustee*), of, &c., of the fifth part.

Conveyance by Trustees under a Power of Sale contained in a Will, the Heir and Legatees concurring.

Recital that testator has devised to trustees upon trust to sell.

2. WHEREAS (*testator*), late of, &c., Esquire, deceased, by his last will, dated the day of , devised all his real and personal estate unto the said (*trustees*), their heirs, executors, administrators and assigns, according to the respective natures and qualities of the said premises, *upon trust* to sell and dispose of the same by public auction or private contract, and out of the proceeds of such sale or sales to pay all the said (*testator's*) debts, funeral and testamentary expenses, and certain legacies bequeathed to the said (*legatees*), and to stand possessed of the residue, upon certain trusts in the now reciting will expressed and contained; and the said (*testator*) declared that the receipts of the trustees or trustee for the time being of his said will should be a sufficient discharge to purchasers, and effectually exonerate them from all responsibility with respect to the application of the purchase moneys; and the said (*testator*) also appointed the said (*trustees*) joint executors of his said will.

Of testator's death.

3. AND WHEREAS the said (*testator*) died on the day of 18 , without having altered or revoked his said will, which was duly proved by the said (*trustees*), the executors therein named, in the Prerogative Court of the Archbishop of Canterbury, on the day of following.

Of contract to purchase.

4. AND WHEREAS the said (*purchaser*) has contracted with the said (*trustees*) for the purchase of the hereditaments and premises hereinafter described (and which form a portion of the said testator's real estate), and the fee-simple and inheritance thereof, in possession, free from all incumbrances, for the sum of £ .

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of

personal estate of their testator into money for the purpose of paying his debts, the application of which a purchaser has no right to interfere with; consequently, from actual necessity, and in common justice, he is exonerated from seeing how it is laid out, beyond the liquidation of those charges upon the property which are independent of the will, as mortgages, or other charges thereon, anterior to such will. (See Mr. Butler's note to 1 Ins. 290; 3 Prest. Abs. 259, 290.)

the said contract, and in consideration of £ sterling this day No. V.
 paid by the said (*purchaser*) to the said (*trustees*), the receipt
 whereof the said (*trustees*) hereby acknowledge, and therefrom do
 release the said (*purchaser*), his heirs, executors, administrators and
 assigns, THEY, the said (*trustees*), (as such trustees as aforesaid), DO,
 by these presents, grant, release and convey; the said (*legatees*) DO,
 and each and every of them DOTH, by these presents, remise, release,
 and quit claim; and the said (*heir*) DOTH, by these presents grant,
 release, and confirm, unto the said (*purchaser*), and his heirs, ALL,
 &c. (HERE DESCRIBE *parcels* and INSERT *general words*.) AND all
 the estate, right, title, and interest, both legal and equitable, of
 them the said (*trustees, legatees, and heir,*) of, in, to, out of, or upon
 the said hereditaments and premises. [INSERT *habendum to dower*
uses, and also clause to debar widow of dower, ut ante, No. I.,
 clauses 6, 7.]

Conveyance by
 Trustees under
 a Power of Sale
 contained in a
 Will, the Heir
 and Legatees
 concurring.

Testatum, by
 which the
 trustees convey,
 legatees release,
 and heir
 confirms.

6. AND each of them the said (*trustees*), so far as relates to his
 own acts and deeds, doth hereby for himself, his heirs, executors
 and administrators, covenant with the said (*purchaser*), his heirs
 and assigns, that they the said (*trustees*) respectively, have not
 done or permitted, or willingly or knowingly suffered, any act,
 deed, matter, or thing whatsoever, whereby, or by reason or means
 whereof, the said hereditaments and premises hereby granted and
 released, or any part thereof, can be incumbered.

Covenant from
 trustees that
 they have done
 no act to
 incumber.

7. AND the said (*heir*) doth hereby for himself, his heirs,
 executors and administrators, covenant with the said (*purchaser*),
 his heirs and assigns, that (notwithstanding any act done by him
 the said (*heir*), or the said (*testator*), deceased, to the contrary)
 they, the said (*trustees*), (*legatees*), and (*heir*), or some or one of
 them, now have in themselves, himself or herself, good right, full
 power and lawful and absolute authority, by these presents, to
 grant and release the said hereditaments and premises to the uses
 and in manner aforesaid, according to the true intent and meaning
 of these presents. [ADD *covenants for quiet enjoyment; freedom*
from incumbrances; and for further assurance, ut ante, No. II.,
 clauses 6 and 7.]

Covenants for
 title, &c. by
 heir.

8. AND WHEREAS the title deeds and writings specified and Recital that

No. V.

*Conveyance by
Trustees under
a Power of Sale
contained in a
Will, the Heir
and Legatees
concurring.*

set forth in the schedule hereunder written relate as well to the title of the hereditaments and premises hereby granted and released, as of certain other hereditaments of the said (*testator*), deceased, of greater value. (*b*)

title deeds relate
to other
property.

Covenant from
trustees for the
production of
title deeds.

9. NOW THIS INDENTURE FURTHER WITNESSETH that, in consideration of the premises, the said (*trustees*) do hereby for themselves, their heirs and assigns, covenant with the said (*purchaser*) his heirs and assigns, that they, the said (*trustees*), their heirs or assigns, will at all times, at the request and costs of the said (*purchaser*), his appointees, heirs or assigns (unless prevented by fire or other inevitable accident), produce and show forth to him or them in England, or to his or their attorney, solicitor, agent or counsel, or before any court or courts of law or equity, or commission for the examination of witnesses, or otherwise as occasion shall require, the said deeds and writings in manifestation, defence and support of the title of the said (*purchaser*), his appointees, heirs or assigns, to the said hereditaments and premises hereby granted and released, or any part of the same, and at the like request and costs of the said (*purchaser*) his appointees, heirs or assigns, furnish him and them with true and attested or other copies, extracts or abstracts, and permit the same to be examined and compared with the originals; and also will, in the meantime, keep and preserve the same deeds and writings undefaced, unobliterated and uncanceled. PROVIDED ALWAYS, that in case the other hereditaments and premises of the said (*testator*) deceased shall at any future time or times be sold and conveyed, and the said (*trustees*), their heirs or assigns, shall procure the purchaser or purchasers thereof, to whom the said title deeds and writings shall be delivered over, his, her, or their heirs or assigns, to enter

Purchaser is
entitled to
covenant for the
production of
title deeds,
whenever they
are retained by
the vendor.

(*b*) Whenever the title deeds are retained by the vendor, the purchaser is entitled to a covenant for their production; nor would equity decree a specific performance against a purchaser in case a vendor should refuse to enter into a covenant of this kind. A covenant for the production of the title deeds is a covenant running with the land (*Barclay v. Raine*, 1 Sim. & Stu. 449), and must therefore be entered into with the parties taking the legal estate; for if entered into with the parties taking only a beneficial interest in the property, they will be mere covenants in gross, which are only personally binding upon the parties entering into them, but in no wise running with the land or binding on the reversion.

into a covenant with the said (*purchaser*), his heirs and assigns, to the same effect as the covenant in that behalf hereinbefore lastly contained, and shall cause the deed or deeds containing such covenant, to be delivered to the said (*purchaser*), his heirs or assigns, free of all costs and charges whatsoever, then the covenant hereinbefore lastly contained on the part of the said (*trustees*), their heirs and assigns, shall from thenceforth cease and determine, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

No V.

*Conveyance by
Trustees under
a Power of Sale
contained in a
Will, the Heir
and Legatees
concurring.*

IN WITNESS, &c.

THE SCHEDULE TO WHICH THE WITHIN-WRITTEN INDENTURE REFERS.

Date of Document.	Nature of Document.	Names and Description of Parties.
1801. 1st & 2nd March.	Indentures of Lease and Release	Between A. B. of the one part, and C. D. of the other part.
1824. 12th & 13th May.	Indentures of Lease and Release	Between C. D. of the one part, and (<i>testator</i>) of the other part.
1848. 12th of July.	Probate copy of Will of this date	Of the said (<i>testator</i> .)

No. VI.

CONVEYANCE BY HUSBAND AND WIFE TO A SUB-PURCHASER,
THE WIFE CONCURRING TO EXTINGUISH HER DOWER. (a)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of original contract. 3. Recital of contract with sub-purchaser. 4. Of request to vendor to convey. 5. That wife being entitled to dower will release the same. | <ol style="list-style-type: none"> 6. Testatum, by which vendor conveys, and wife releases, and mesne purchaser confirms. 7. Covenant from vendor that deed shall be duly acknowledged by his wife. 8. Usual covenants for title. |
|--|--|

Parties.

1. THIS INDENTURE, made the day of A.D., 18 ,
BETWEEN (*vendor*) of, &c., and (*Christian name*) his wife, of the
first part, (*mesne purchaser*) of, &c., of the second part, and (*sub-
purchaser*) of, &c., of the third part.

Recital of original contract.

2. WHEREAS the said (*mesne purchaser*) some time since contracted with the said (*vendor*) for the absolute purchase of the hereditaments and premises hereinafter described, and intended to

Practical observations.

(a) Formerly a married woman could only have released her right of dower by fine or recovery, though more frequently the former mode of assurance was resorted to. Both these modes of assurance, which were a very expensive and roundabout course of proceeding to attain a very simple end, have been superseded by less expensive and more simple assurances, instituted by the statute of 3 & 4 Will. 4, c. 74, which, after abolishing fines and recoveries, amongst many other important matters, empowers every married woman (not being a tenant in tail), by deed, to dispose of or release any estate or interest she may be entitled to in real property. But, to render such assurance valid, her husband must concur in the deed, and she must be examined separate and apart from him before a Judge or Master in Chancery, or by the commissioners appointed under the act, as to her freedom and consent (see sects. 40, 77, 79); in addition to which the deed must be duly acknowledged by her, and a memorandum of such acknowledgment endorsed on the deed (sect. 80); accompanied also with a certificate of acknowledgment, to be engrossed on a separate piece of parchment: (see *the forms infra*, No. VII.)

be hereby granted and released, and the inheritance thereof, in fee-simple, free from incumbrances, at the price of 900*l*.

No. VI.

Conveyance by Husband and Wife to a Sub-purchaser, the Wife concurring.

3. AND WHEREAS the said (*sub-purchaser*) hath since contracted with the said (*mesne purchaser*) for the absolute purchase of the said hereditaments and premises, and the fee-simple and inheritance thereof, free from incumbrances, at the price of 1,050*l*.

Of contract with sub-purchaser.

4. AND WHEREAS the said (*mesne-purchaser*) and (*sub-purchaser*) have severally requested the said (*vendor*) to convey the said hereditaments and premises to the said (*sub-purchaser*) and his heirs, in manner hereinafter mentioned.

Of request to vendor to convey.

5. AND WHEREAS the said (*Christian name*), the wife of the said (*vendor*), being entitled to dower out of the said hereditaments and premises, hath agreed to concur in these presents for the purpose of extinguishing all her right and title to the same.

That wife being entitled to dower will release the same.

6. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 900*l*. sterling, this day paid by the said (*sub-purchaser*) to the said (*vendor*), by the direction of the said (*mesne purchaser*), testified by his being a party hereto, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release the said (*sub-purchaser*), and also the said (*mesne-purchaser*), and their respective heirs, executors, administrators and assigns for ever; and also in consideration of the further sum of 150*l*. sterling, at the same time paid by the said (*sub-purchaser*) to the said (*mesne-purchaser*), the payment and receipt in manner aforesaid of which said two several sums of 900*l*. and 150*l*., making together the said sum of 1,050*l*., the purchase-money for the said hereditaments and premises, the said (*mesne-purchaser*) hereby acknowledges, and therefrom doth release the said (*sub-purchaser*), his heirs, executors, administrators and assigns for ever, HE the said (*vendor*), by the direction of the said (*mesne-purchaser*) testified as aforesaid, BOTH by these presents grant, release and convey, SHE the said (*Christian name*), the wife of the said (*vendor*), for the purpose of extinguishing her right of dower in the said premises, and with the concurrence of the said (*vendor*), BOTH by these presents release and quit claim, and the said

Testatum, by which vendor conveys and wife releases, and mesne purchaser confirms.

No. VI.

Conveyance by
Husband and
Wife to a Sub-
purchaser, the
Wife concur-
ring.

(*mesne-purchaser*) DOTH by these presents release and confirm unto the said (*sub-purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE the parcels; INSERT general words, and all-estate clause, and all-deeds clause. HABENDUM, and declaration to bar dower, *ut ante*, No. I., clauses 6, 7.]

Covenant from
vendor that
deed shall be
duly acknow-
ledged by his
wife.

7. AND the said (*vendor*) doth hereby, for himself, his heirs, executors and administrators, covenant with the said (*sub-purchaser*), his heirs and assigns, that these presents shall forthwith, at the costs of the said (*vendor*), be duly acknowledged by the said (*Christian name*) his wife, she hereby consenting, and otherwise perfected with the solemnities required by law for rendering the deeds of married women effectual to extinguish their interests in freehold estates.

Usual covenants
for title.

8. AND also that (notwithstanding any act or deed done or permitted by the said (*vendor*) to the contrary), the said (*mesne-purchaser*) and (*vendor*), or one of them, now have or hath in themselves or himself full power to grant and release the said hereditaments and premises to the uses and in manner aforesaid, according to the true intent and meaning of these presents. [INSERT the remaining covenants for quiet enjoyment, freedom from incumbrances, and for further assurance, &c., *ut ante*, No. I. clauses 9, 10, pp. 49, 50.]

No. VII.

CLAUSES RELATIVE TO ACKNOWLEDGMENTS BY MARRIED WOMEN.

- | | |
|-----------------------------------|--|
| 1. Memorandum of acknowledgment. | 3. Variation where the acknowledgment is taken before a judge or master in chancery. |
| 2. Certificate of acknowledgment. | |

1. THIS DEED marked A. was this day produced before us [*or* Memorandum of acknowledgment.], and acknowledged by (*wife*) the wife of (*husband*), therein-named, to be her act and deed; previously to which acknowledgment the said (*wife*) was examined by us [*or* me, as the case may be] separately and apart from her husband, touching her knowledge of the contents of the said deed, and of her consent thereto, and declared the same to be freely and voluntarily executed by her.

[SIGNATURE of judge, master, or commissioners, as the case may be.]

2. THESE ARE TO CERTIFY that on the day of , in the year 18 , before us, two of the perpetual commissioners appointed for the county of , for taking the acknowledgments of deeds of married women, pursuant to an act made and passed in the third and fourth years of the reign of his late Majesty King William the Fourth, intituled "An Act for the Abolition of Fines and Recoveries, and for Substitution of more Simple Modes of Assurance," appeared personally (*Christian and surname of wife*), wife of (*husband*), of, &c., and produced a certain indenture marked A., bearing date the day of , 18 , and made between [HERE DESCRIBE parties], and acknowledged the same to be her

No. VII. *Clauses relative to Acknowledgments by Married Women.* act and deed. And we (*or I*) do hereby certify that the said (*wife*) was, at the time of her acknowledging the said deed, of full age and competent understanding, and that she was examined by us (*or me*) apart from her husband, touching her knowledge of the contents of the said deed, and of her consent thereto, and that she freely and voluntarily consented to the same.

VARIATION WHERE THE SAME IS TAKEN BEFORE A JUDGE OR MASTER
IN CHANCERY.

3. *Or*, before me, (*name and title of Chief Justice*), Lord Chief Justice of the Court of Common Pleas, at Westminster. [*Or*, before the undersigned, (*name and title of puisne Judge*), one of the justices of the Court of Common Pleas, at Westminster.] [*Or*, before me, A. B., one of the Masters in ordinary of the Court of Chancery.] [*Or otherwise, as the case may be.*]

No. VIII.

CONVEYANCE IN FEE BY TRUSTEES UNDER POWERS OF SALE
CONTAINED IN A MARRIAGE SETTLEMENT.

- | | |
|--|--|
| 1. Parties.
2. Recital of marriage settlement,
whereby power of sale is created.
3. Of contract for sale.
4. Testatum, by which the trustees | revoke the old uses and appoint
to the purchaser.
5. Covenant that parties have good
right to convey.
6. For quiet enjoyment and freedom
from incumbrances. |
|--|--|

1. THIS INDENTURE, made the day of A.D., 18 , Parties.
 BETWEEN (*trustees*) of, &c., of the first part, (*husband*) of, &c.,
 and (*Christian name*) his wife, of the second part, (*purchaser*) of
 &c., of the third part, and (*dower trustee*) of, &c., of the fourth part.

2. WHEREAS by indentures of lease and release bearing date Recital of mar-
 respectively on or about the 24th and 25th days of October, in the riage settlement
 year 1835, the indenture of release being made between (*husband's* whereby the
father) of the first part, the said (*husband*) of the second part, the power is created.
 said (*Christian name*), the wife of the said (*husband*), of the third
 part, and the said (*trustees*) of the fourth part (being a settlement
 made previously to and in contemplation of a marriage then
 intended between the said (*husband*) and (*wife*), and which was
 shortly afterwards duly solemnized), the hereditaments and premises
 hereinafter described, and which are intended to be hereby
 appointed and conveyed, were (with other hereditaments) limited
 and assured unto the said (*trustees*) and their heirs, To the use of
 the said (*husband's father*) and his assigns for life, without impeach-
 ment of waste; with remainder to certain uses, and upon certain
 trusts, for the benefit of the said (*husband*) and (*wife*) and the issue
 of the said intended marriage, as therein declared and contained.

No. VIII.
 Conveyance in
 Fee by Trustees
 under Powers
 of Sale
 contained in
 Marriage
 Settlement.

AND in the now-reciting indenture of release and settlement is contained a proviso and declaration empowering the said (*trustees*), or the survivor of them, his heirs or assigns, at any time after the decease of the said (*husband's father*), with the consent of the said (*husband*) and (*wife*), during their joint lives, and after the decease of either of them, with the consent of the survivor, and after the decease of such survivor, at the discretion of the said (*trustees*) or the survivor of them, his heirs or assigns, or other the trustees or trustee for the time being of the now-reciting indenture, by any deed or deeds to be executed by them or him in the presence of and attested by two or more credible witnesses, to convey and dispose of the whole or any part or parts of the said hereditaments and premises comprised in the said hereinbefore recited indenture of release and settlement, and for that purpose to revoke the uses therein contained, and to limit and appoint new uses in favour of such purchaser or purchasers, or otherwise as he or they should direct.

Of contract for
 sale.

3. AND WHEREAS the said (*trustees*), with the consent of the said (*husband*) and (*Christian name*) his wife, and in exercise of the said power of sale contained in the said hereinbefore recited indenture of settlement, have contracted to sell the hereditaments and premises hereinafter described, and the fee-simple and inheritance thereof, in possession, free from all incumbrances, unto the said (*purchaser*) for the price of 1,500*l*.

Testatum, by
 which trustees
 revoke the old
 uses and appoint
 the new uses in
 favour of the
 purchaser.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for effecting the said sale, and also in consideration of the sum of 1,500*l*. sterling, paid by the said (*purchaser*) to the said (*trustees*) on the execution hereof, the receipt of which the said (*trustees*) hereby acknowledge, and therefrom do by these presents release and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, They the said (*trustees*), (with the consent and by the direction of the said (*husband*) and (*Christian name*) his wife, testified by their being parties hereto and concurring herein), in exercise of the power reserved to them the said (*trustees*) by the said hereinbefore recited indenture of settlement, and of every other power enabling them in this behalf, Do by this present deed, executed by them in the

presence of the two credible witnesses whose names are intended to be hereupon indorsed, absolutely revoke and make void all and every the uses, trusts, powers, and provisoes limited, declared and contained in the said hereinbefore recited indenture of settlement, so far as relates to the hereditaments and premises intended to be hereby appointed, and Do by these presents absolutely and irrevocably direct, limit, and appoint, that ALL, &c., [HERE DESCRIBE *parcels*] with their appurtenances, shall from henceforth be [HERE INSERT *dower uses*; ALSO *declaration in bar of dower, ut ante*, No. I., clauses 6, 7, pp. 46, 48. ALSO *covenant from trustees that they have done no act to incumber, ut ante*, No. V., clause 6, p. 61.]

No. VIII.

Conveyance in Fee by Trustees under Powers of Sale contained in Marriage Settlement.

5. AND the said (*husband*) doth hereby for himself, his heirs, executors, and administrators, and also for the said (*Christian name*) his wife, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act or thing done or permitted by the said (*husband*) or the said (*husband's father*) deceased, to the contrary) the said (*trustees*) now have in themselves, with such consent as aforesaid, good right, full power, and lawful authority to limit and appoint the said hereditaments and premises to the uses and in manner aforesaid.

Covenant that parties have good right to convey.

6. AND also that the same hereditaments and premises shall be held and enjoyed accordingly, without let, suit, eviction, ejection, interruption, molestation, or disturbance of or by the said (*husband*) and (*Christian name*) his wife, or any other person rightfully claiming under them, or the said (*father*) deceased, or under or by virtue of the uses, trusts, and provisoes of the said hereinbefore recited indenture of settlement. AND that free from all estates, rights, titles, liens, charges and incumbrances whatsoever, made, created, or suffered by the said (*husband*) and (*Christian name*) his wife, or the said (*father*) deceased, or any other person whomsoever rightfully claiming under or in trust for them, or either of them, or by or through their, or either of their acts, deeds, default, privity, or procurement. [ADD *covenant for further assurance, ut ante*, No. I., clause 10, p. 50.]

For quiet enjoyment, and freedom from incumbrances.

No. IX.

RELEASE BY ONE JOINT TENANT TO HIS COMPANION IN FEE;
VARIATION WHERE THE PROPERTY IS TO BE LIMITED TO
DOWER USES.

1. Parties.
2. Recital of the will, creating the estate in joint tenancy.
3. Recital of contract to purchase.
4. Testatum, by which one joint tenant releases to his companion.

Substituted Clauses.

- A. Testatum where the property is to be limited to dower uses.
- B. Habendum to trustee to dower uses, with ultimate limitation to purchaser in fee.

Parties.

1. THIS INDENTURE, made the day of A. D., 18 ,
BETWEEN (*relessor*), of, &c., of the one part, and (*relessee*), of,
&c., of the other part. (*a*)

Recital of the
will creating the
estate in joint
tenancy.

2. WHEREAS (*testator*), late of, &c., Esquire, deceased, by
his last will, dated the day of , duly executed and
attested, amongst other devises and bequests, devised the heredita-
ments and premises hereinafter described and intended to be
hereby released unto and to the use of the said (*relessor*) and
(*relessee*), their heirs and assigns for ever.

Recital of
contract to
purchase.

3. AND WHEREAS the said (*relessor*) has contracted to sell his
estate and interest in the said hereditaments and premises to the
said (*relessee*), free from incumbrances, for the sum of £ .

Testatum, by
which one
joint tenant
releases to his
companion.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of
the said contract, and in consideration of the sum of £ sterling,
this day paid by the said (*relessee*) to the said (*relessor*), the receipt

Practical
suggestions.

(*a*) If the property is intended to be limited to dower uses, it will be necessary
to add a trustee for that purpose to the parties above mentioned.

whereof the said (*relessor*) hereby acknowledges, and therefrom doth acquit, exonerate and for ever discharge the said (*relessee*), his heirs, executors, administrators and assigns, HE, the said (*relessor*), DOTH, by these presents, release unto, and to the use of, the said (*relessee*) and his heirs, all the estate, right, title, and interest, both legal and equitable, of him the said (*relessor*), of and in ALL, &c. (b) [HERE DESCRIBE *parcels*; and then, omitting *habendum*, INSERT *covenants for title, ut ante*, No. III., clauses 4, 5, 6, p. 56.]

No. IX.

Release by one Joint Tenant to his Companion: Variation where Property is to be limited to Dower Uses.

(b) In releases from one joint tenant to another, as in the case of surrenders of estates for years, it is more correct to omit the *habendum*. In case, however, it is desirable to have the property conveyed to uses to bar dower, it will then be necessary to convey the whole property to a trustee in fee, to hold to him and his heirs, to the usual dower uses. The following form in such case should be substituted for the above *testatum* clause:—

“A. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of £ sterling, paid by the said (*relessee*) to the said (*relessor*) on the execution hereof, the receipt of which the said (*relessor*) hereby acknowledges, and therefrom doth exonerate and discharge the said (*relessee*), his heirs, executors, administrators and assigns; and also, in consideration of the sum of 5s. at the same time as aforesaid paid by the said (*trustee to uses*) to the said (*relessor*) and (*relessee*), the receipt whereof is hereby acknowledged; the said (*relessor*) and (*relessee*) do by these presents grant, release, and convey, unto the said (*trustee to uses*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*]; and all rights, members, and appurtenances to the said hereditaments and premises belonging; and all the estate, right, title, and interest, both legal and equitable, of them the said (*relessor*) and (*relessee*) therein. Together with all deeds and writings relating to the title of the said hereditaments and premises in the custody or power of the said (*relessor*) and (*relessee*), or which they can procure without suit.”

B. “TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*trustee to uses*), and his heirs, TO THE USES, upon the trusts, and for the ends, intents, and purposes hereinafter limited, ex-

Habendum to trustee to dower uses, with the ultimate limitation to the purchaser in fee.

No. IX.

Release by one
Joint Tenant to
his Companion:
Variation where
Property is to
be limited to
Dower Uses.

pressed and declared, (that is to say), TO SUCH USES, upon such trusts, and for such ends, intents, and purposes, as the said (*relessee*) shall from time to time, or at any time, by deed or deeds appoint; and in default of such appointment, and subject thereto, TO THE USE of the said (*relessee*) and his assigns, for and during the term of his natural life, without impeachment of waste; and from and immediately after the determination of that estate by any means in his lifetime, TO THE USE of the said (*trustee to uses*), his executors and administrators, during the life of, and in trust for, the said (*relessee*) and his assigns; and after the determination of the said hereinbefore lastly limited estate, TO THE USE of the said (*relessee*), his heirs and assigns for ever. [ADD declaration in bar of dower, *ut ante*, No. I., clause 7, p. 48.]

No. X.

CONVEYANCE (IN FEE) BY THREE COPARCENERS, ONE OF WHOM IS MARRIED, AND TWO SINGLE.

- | | |
|--|--|
| 1. Parties.
2. Recital of death of father of the co-heiresses intestate, whereupon the lands descended on them in coparcenary.
3. Of contract to sell.
4. Testatum. | 5. Covenants that vendors have good right to convey.
6. For quiet enjoyment and freedom from incumbrances.
7. For further assurance.
8. Recital that title-deeds relate also to other property of the vendors.
9. Covenant to produce title-deeds. |
|--|--|

1. THIS INDENTURE, made the day of A.D., 18 , Parties.
 BETWEEN (*husband*) of (*first co-heiress*) of, &c., and (*Christian name*) his wife, of the first part, (*second co-heiress*) of, &c., spinster, of the second part, (*third co-heiress*) of, &c., spinster, of the third part, (*purchaser*) of, &c., of the fourth part, and (*dower trustee*) of, &c., of the fifth part.

2. WHEREAS R. S., the father of the said (*Christian name*), the wife of the said (*husband*), (*second co-heiress*), and (*third co-heiress*), being seised in fee (amongst divers other lands and hereditaments) of the hereditaments and premises hereinafter described and intended to be hereby granted and released, died on or about the day of intestate as to his real estate, which upon his decease descended upon his three daughters, the said (*Christian name*), the wife of the said (*husband*), the said (*second co-heiress*), and the said (*third co-heiress*), as his co-heiresses, in coparcenary.

3. AND WHEREAS the said parties hereto of the first three parts, have contracted to sell the said hereditaments and premises,

Of contract to sell.

No. X.

Conveyance
(in fee) by three
Coparceners,
one of
whom is married
and two single.

Testatum.

and the fee simple and inheritance thereof, in possession, free from incumbrances, unto the said (*purchaser*) for the sum of £ .

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of £ sterling, this day paid by the said (*purchaser*) to the said (*husband*), and (*Christian name*) his wife, (*second co-heiress*), and (*third co-heiress*), the receipt whereof the said (*husband*) and (*Christian name*) his wife, (*second co-heiress*), and (*third co-heiress*), hereby acknowledge, and therefrom do and each and every of them doth acquit, release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, THEY the said (*husband*), and (*Christian name*) his wife, (*second co-heiress*), and (*third co-heiress*), DO, and each and every of them DOTH, by these presents, grant, release, and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*, and insert *general words*.] AND all the estate, right, title and interest, both legal and equitable, of them the said (*husband*), and (*Christian name*) his wife, (*second co-heiress*), and (*third co-heiress*) therein. [ADD *habendum to uses to bar dower*, and *declaration, ut ante*, No. I., clauses 6, 7, pp. 46, 48. INSERT *covenant from husband that deed shall be acknowledged by his wife, ut ante*, No. VI., clause 7, p. 66.] (a)

Covenants that
vendors have
good right to
convey.

5. AND each of them the said (*husband*), (*second co-heiress*), and (*third co-heiress*), do hereby for themselves, and their respective heirs, executors and administrators (the said (*husband*) covenanting for the acts of the said (*Christian name*) his wife), severally covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act done or permitted by them, or either of them, or the said (*father*), deceased, or any of his ancestors or testators to the contrary) they, the said (*husband*) and (*Christian name*) his wife, (*second co-heiress*), and (*third co-heiress*), or some or one of them, now have in themselves, himself or herself, good right, full power, and lawful and absolute authority, by these

Practical
suggestions.

(a) The Memorandum of Acknowledgment, *ut ante*, No. VI., clause 1, must be indorsed on the deed, and the deed duly acknowledged in pursuance of the Fine and Recovery Substitution Act, and must also be accompanied by the Certificate of Acknowledgment: as to which see *ante*, No. VII., clause 2, p. 67.

presents, to convey the said hereditaments and premises hereby granted and released to the uses and in manner aforesaid.

No. X.

*Conveyance
(in fee) by three
Coparceners,
one of
whom is married
and two single.*

6. AND ALSO that (notwithstanding any such act as aforesaid) the said hereditaments and premises so granted and released as aforesaid, shall or may, from time to time, and at all times, be peaceably and quietly held and enjoyed accordingly, without let, suit, eviction, ejection, interruption, or denial, of or by the said parties hereto of the first three parts, or any other person or persons whomsoever rightfully claiming under or in trust for them, or either of them, or the said (*father*), deceased, or any of his ancestors or testators: AND that free from all former and other estates, rights, titles, liens, charges and incumbrances whatsoever, made or created by the said parties hereto of the first three parts, or either of them, or the said (*father*), deceased, or any of his ancestors or testators, or any other person or persons whomsoever rightfully claiming under them, or either of them, or by or through their, his, or her acts, deeds, default, privity, or procurement.

*For quiet
enjoyment, and
freedom from
incumbrances.*

7. AND MOREOVER, that the said parties hereto of the first three parts, and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises, under or in trust for them, or either of them, shall and will from time to time, and at all times hereafter, at the request and costs of the said (*purchaser*), his appointees, heirs or assigns, make, do, acknowledge, enter into, execute, and perfect all such further acts and assurances for the further, better, or more perfectly or satisfactorily granting, releasing, assuring, and confirming the said hereditaments and premises to the uses aforesaid, according to the true intent and meaning of these presents, as the said (*purchaser*), his appointees, heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

*For further
assurance.*

8. AND WHEREAS, the title deeds and writings specified and set forth in the schedule hereunto written relate as well to the title of the said hereditaments and premises hereby granted and released, as also to certain other lands and hereditaments of the said parties hereto of the first three parts of greater value.

*Recital that title
deeds relate
also to other
property of the
vendors.*

No. X.

*Conveyance
(in fee) by three
Coparceners,
one of
whom is married
and two single.*

*Covenant to
produce title
deeds.*

9. NOW THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, the said parties hereto of the first, second, and third parts, the said (*husband*) covenanting for and on behalf of the said (*Christian name*) his wife, do hereby for themselves, their heirs, and assigns, jointly and severally covenant with the said (*purchaser*), his heirs and assigns, that they the said parties hereto of the first, second, and third parts, shall and will from time to time and at all times (unless prevented by fire or other inevitable accident), at the request and costs of the said (*purchaser*), his appointees, heirs, or assigns, produce and show forth to him or them, in England, or his or their attorney, solicitor, agent, or counsel, or before any court or courts of law, or equity, or commission for the examination of witnesses, or otherwise, as occasion shall require, the said deeds and writings, in manifestation, defence, and support of the title of the said (*purchaser*), his appointees, heirs, and assigns, to the said hereditaments and premises hereby granted and released, or any part of the same; and at the like request and costs of the said (*purchaser*), his appointees, heirs, or assigns, furnish him and them with true and attested or other copies, extracts, or abstracts, and permit the same to be examined and compared with the originals; and also will in the meantime keep and preserve the same deeds and writings undefaced, unobliterated, and uncanceled.

IN WITNESS, &c.

[SEE *Precedent of a Form of Schedule of Title Deeds*, ante, p. 63.]

No. XI.

CONVEYANCE IN FEE OF AN ADVOWSON.

- | | |
|---|-------------------------|
| 1. Parties. | 3. Testatum. |
| 2. Recital that vendor being seised
in fee has contracted to sell. | 4. Covenants for title. |

1. THIS INDENTURE, made the day of A.D., 18 , Parties.
BETWEEN (*vendor*), of, &c., of the first part, (*purchaser*), of, &c.,
of the second part, and (*dower trustee*), of, &c., of the third part.

2. WHEREAS the said (*vendor*) being seised in fee of the advow- Recital that
son and rectory of the parish church of B., in the county of D., vendor being
whereof the Reverend J. S. is now incumbent, hath contracted to seised in fee has
sell the same, and the inheritance thereof, in fee-simple, free contracted to
from all incumbrances, to the said (*purchaser*) for the sum of sell.
1,800*l*.

3. NOW THIS INDENTURE WITNESSETH, that in pursuance of Testatum.
the said contract, and in consideration of the sum of 1,800*l*. sterling
this day paid by the said (*purchaser*) to the said (*vendor*), the
receipt of which the said (*vendor*) hereby acknowledges, and there-
from doth release and for ever discharge the said (*purchaser*), his
heirs, executors, administrators, and assigns, HE, the said (*vendor*),
DOETH, by these presents, grant and confirm unto the said (*pur-
chaser*) and his heirs, ALL that advowson, donation, and right of
patronage and presentation, of and in all that the rectory or parish
church of B., in the county of D., and all rights, members, and
appurtenances to the same belonging; and all the estate, right,
title and interest, both legal and equitable, of him the said (*vendor*)

No. XI. therein. [HERE INSERT *habendum to uses to bar dower, and also*
 ———— *declaration to bar dower*, as in No. I. clauses 6 and 7, pp. 46, 48;
Conveyance in or, if the limitation is to be simply in fee, INSERT *habendum, ut ante*,
Fee of an No. III., clause 3, p. 55.]
 ———— *Adowson.*

Qualified
 covenants for
 title, that
 vendor is seised
 in fee.

4. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act done by him the said (*vendor*), or any of his ancestors or testators, to the contrary), he the said (*vendor*) is, at the time of the execution hereof, lawfully, rightfully and absolutely seised of the said advowson and premises, with the appurtenances, of and for a good, sure, perfect, absolute and indefeasible inheritance in fee-simple, without any manner of condition, contingent proviso, power of revocation, or limitation of any new or other use or uses, or any other power, restraint, cause, matter, or thing whatsoever, to alter, change, charge, revoke, make void, lessen, abridge or determine the same estate. [ADD *covenants that vendor has good right to convey, for quiet enjoyment, freedom from incumbrances, and for further assurance, ut ante*, No. III., clauses 4, 5, and 6, p. 56.]

No. XII.

CONVEYANCE OF THE NEXT PRESENTATION TO AN ADVOWSON.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of contract to sell next presentation. 3. Testatum. 4. Habendum. 5. Proviso that if incumbent is promoted to a bishopric purchaser shall have next turn. | <ol style="list-style-type: none"> 6. Covenant from vendor that he is seised in fee. 7. Has good right to convey. 8. For quiet enjoyment and freedom from incumbrances. 9. For further assurance. |
|---|---|

1. THIS INDENTURE, made the day of 185 , Parties.
 BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*), of,
 &c., of the other part.

2. WHEREAS the said (*vendor*) being seised in fee of the advow- Recital of
 son and rectory of the parish church of St. Mary, in the county of contract to sell
 D—, whereof (*incumbent*) is now incumbent, hath contracted to next presenta-
 tion.
 sell the next presentation or avoidance of the said church to the
 said (*purchaser*) for the sum of 1,280*l*.

3. NOW THIS INDENTURE WITNESSETH, that in pursuance of Testatum.
 the said contract, and in consideration of the sum of 1,280*l*.
 sterling, paid by the said (*purchaser*) to the said (*vendor*) on the
 execution hereof, the receipt of which the said (*vendor*) hereby
 acknowledges, and therefrom doth release, exonerate, and for ever
 discharge the said (*purchaser*), his heirs, executors, administrators
 and assigns, HE the said (*vendor*) DOTII by these presents grant
 and confirm unto the said (*purchaser*), his executors, administrators
 and assigns, ALL that turn, avoidance, or right of nomination and

No. XII. *Conveyance of the next Presentation to Advowson, &c.* presentation in and to the said rectory or parish church of St. Mary, in the said county of D—, whenever the same shall first become void after the execution hereof by the death, resignation, or deprivation of the said (*incumbent*), AND all rights, privileges, commodities and emoluments to the same belonging, or in any-wise appertaining.

Habendum. 4. TO HAVE AND TO HOLD the said next turn and presentation, and premises hereby granted, with the appurtenances, unto the said (*purchaser*), his executors, administrators and assigns.

Proviso that if incumbent is promoted to a bishopric purchaser shall have next turn. 5. PROVIDED ALWAYS, that in case the said next presentation of the said advowson shall devolve upon the crown by reason of the said (*incumbent*) being promoted to a bishopric, then and in such case the said (*purchaser*) shall be entitled to the next presentation immediately following, in lieu of the presentation so devolving upon the crown as aforesaid.

Covenant from vendor that he is seised in fee. 6. AND the said (*vendor*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*purchaser*), his executors, administrators and assigns, that (notwithstanding any act, deed, matter, or thing whatsoever, had, made, done, executed, committed or suffered to the contrary by him the said (*vendor*) or any of his ancestors or testators), he the said (*vendor*) is lawfully, rightfully, and absolutely seised of the said advowson and premises, with the appurtenances, of and for a good, sure, perfect, absolute and indefeasible estate of inheritance in fee simple, without any manner of condition, contingent proviso, power of revocation, or limitation of any new or other use or uses, or any other restraint, cause, matter or thing whatsoever, to alter, change, charge, revoke, make void, lessen, abridge or determine the same estate.

Has good right to convey. 7. AND ALSO, that (notwithstanding any such act, deed, matter or thing as aforesaid) he the said (*vendor*) now hath in himself good right, full power, and lawful and absolute authority to grant the said next presentation to the said advowson unto the said (*purchaser*), his executors, administrators and assigns, in manner aforesaid, according to the true intent and meaning of these presents.

8. AND FURTHER, that the said premises hereby granted shall be held and enjoyed accordingly, without let or disturbance of or by the said (*vendor*), or any other person or persons whomsoever rightfully claiming, by, from, through, under or in trust for him, or by, from, through, under or in trust for any of his ancestors or testators, and that free from all incumbrances created by the said (*vendor*), or any of his ancestors or testators, or any other person or persons whomsoever rightfully claiming by, from, through, under or in trust for him or them, or either of them.

No. XII.

*Conveyance of
the next
Presentation to
Adowson, &c.*

*For quiet
enjoyment and
freedom from
incumbrances.*

9. AND MOREOVER, that the said (*vendor*), and all persons whomsoever rightfully claiming any estate or interest, legal or equitable, in the said advowson and premises, by, from, through, under or in trust for him, or by, from, through, under or in trust for any of his ancestors or testators, shall and will from time to time, and at all times hereafter, at the request and costs of the said (*purchaser*), his executors, administrators or assigns, make, do, acknowledge, enter into, execute and perfect all such further grants, conveyances and assurances in the law whatsoever, for the further, better, or more perfectly or satisfactorily granting, assuring and confirming the said next presentation to the said advowson hereby granted, unto the said (*purchaser*), his executors, administrators and assigns, according to the true intent and meaning of these presents, as the said (*purchaser*), his executors, administrators or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed.

*For further
assurance.*

IN WITNESS, &c.

No. XIII.

CONVEYANCE BY WAY OF FEOFFMENT TO A PURCHASER IN
FEE, WITH POWERS OF ATTORNEY TO DELIVER AND
RECEIVE SEISIN.

- | | |
|--------------|--|
| 1. Parties. | 4. Qualified warranty. |
| 2. Testatum. | 5. Letter of attorney to give seisin. |
| 3. Habendum. | 6. Letter of attorney to receive seisin. |
-

Parties.

1. THIS INDENTURE, made the day of A.D., 18 ,
BETWEEN (*feoffor*) of, &c., of the one part, and (*purchaser*) of,
&c., of the other part.

Testatum.

2. WITNESSETH that in consideration of the sum of £
sterling, this day paid by the said (*purchaser*) to the said (*feoffor*), the
receipt whereof the said (*feoffor*) hereby acknowledges, and there-
from doth by these presents release and discharge the said (*pur-
chaser*), his heirs, executors, administrators and assigns, HE the said
(*feoffor*) HATH given, granted, and infeoffed, and by these presents
DOTH confirm unto the said (*purchaser*) and his heirs, ALL, &c.,
[HERE DESCRIBE *parcels*, and insert *general words*.] AND all rights,
members, and appurtenances to the said hereditaments and premises
belonging; AND all the estate, right, title and interest, both legal
and equitable, of the said (*feoffor*) therein; TOGETHER with all
deeds, evidences, and writings, relating to the title of the said
hereditaments and premises, in the custody or power of the said
(*feoffor*), or which he can procure without suit.

Habendum.

3. TO HAVE AND TO HOLD the said (*short general description*),
and all and singular other the hereditaments and premises herein-
before described, and hereby granted and infeoffed, with their

appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns for ever. No. XIII.

4. And the said (*feoffor*) doth, by these presents, for himself and his heirs, grant that he the said (*feoffor*) and his heirs shall and will for ever warrant and defend the said hereditaments and premises hereinbefore described and hereby infeoffed, with their appurtenances, unto the said (*purchaser*) and his heirs, according to the tenor and effect of these presents, against him the said (*feoffor*), and against all persons rightfully claiming or to claim through, under, or in trust for him, or through or under any of his ancestors or testators.

Deed of Feoffment to a Purchaser in Fee, with Powers of Attorney to deliver and receive seisin.

Qualified warranty.

5. AND the said (*feoffor*) DOTH by these presents appoint A. R., of, &c., and C. D., of, &c., jointly, and each of them severally, to be the true and lawful attorneys and attorney of him the said (*feoffor*), and for him and in his name to enter upon the said hereditaments and premises hereby infeoffed, or upon some part thereof in the name of the whole, and after such entry in the name of the said (*feoffor*), and for him, to give and deliver seisin and possession of the said hereditaments and premises, or some part thereof in the name of the whole, unto the said (*purchaser*) in his own person, or by his attorneys or attorney for that purpose authorized; TO HOLD according to the tenor and effect of these presents, the said (*feoffor*) hereby undertaking to ratify and confirm all and whatsoever his said attorneys or attorney shall lawfully do, or cause to be done, in the premises, by virtue of these presents.

Letter of attorney to give seisin.

6. AND the said (*purchaser*) DOTH, by these presents appoint E. T., of, &c., and E. H., of, &c., jointly, and each of them severally, to be the attorneys and attorney of him the said (*purchaser*), for him and in his name to enter upon the said hereditaments and premises hereby infeoffed, or upon some part thereof, in the name of the whole, and after such entry in the name of the said (*purchaser*), and for him, to receive and take the seisin and possession of the said hereditaments and premises, or of some part thereof in the name of the whole, from the said (*feoffor*) in his own person, or by his attorneys or attorney for that purpose lawfully authorized. To hold according to the

Letter of attorney to receive seisin.

No. XIII. tenor and effect of these presents, the said (*purchaser*) hereby undertaking to ratify and confirm all and whatsoever his said attorneys or attorney shall lawfully do, or cause to be done in the premises by virtue of these presents.

Deed of Feoffment to a Purchaser in Fee, with Powers of Attorney to deliver and receive seisin.

IN WITNESS, &c.

MEMORANDUM OF LIVERY OF SEISIN TO BE INDORSED ON PRECEDING DEED OF FEOFFMENT. (a)

Memorandum
of livery of
seisin.

BE IT REMEMBERED that on the day of the date of the within-written indenture, peaceable and quiet seisin and possession of the within-mentioned hereditaments and premises were taken by the within-named (*attorneys to deliver seisin*), for and in the name of the within-mentioned (*feoffor*), in pursuance of the letter of attorney in that behalf, contained in the within-written indenture, and were immediately after delivered by the said (*attorneys to deliver seisin*), for and in the name of the said (*feoffor*) to the within-named (*attorneys to receive seisin*), and in the name of the within-mentioned (*purchaser*), in pursuance of the letter of attorney in that behalf, contained in the within-written indenture, TO HOLD according to the tenor, form, and effect of the within-written indenture, in the presence of . . .

Witnesses' names and additions.

Practical
observations.

(a) A feoffment with livery of seisin was the usual mode of assurance in ancient times, nor is it wholly out of use even at the present day. The great cause of a preference being shown to this mode of assurance was, that by its operation it would cure all disseisins, and would have turned all other estates into mere rights. But now a feoffment is deprived of all these properties (3 & 4 Will. 4, c. 27; 8 & 9 Vict. c. 27); and has no further operation than any ordinary innocent mode of assurance; and the giving the livery of seisin being attended with some inconvenience, it is not probable that feoffments will ever again come into very general use.

No. XIV.

ENFRANCHISEMENT OF A COPYHOLDER, AND GRANT OF COMMON.

- | | |
|---|---|
| <p>1. Parties.</p> <p>2. Recital of admission of tenant to copyholds.</p> <p>3. Of agreement for enfranchisement.</p> <p>4. Testatum.</p> | <p>5. Habendum, to purchaser in fee, enfranchised.</p> <p>6. Proviso that preceding grant shall not be construed to extend to enfranchise any other copyholds not therein included.</p> <p>7. Grant of right of common.</p> |
|---|---|

1. THIS INDENTURE, made the day of A.D., 18 , Parties.
 BETWEEN (*lord*), of, &c., lord of the manor of A., in the county of
 B., of the one part; and (*tenant*), of, &c., one of the copyhold
 tenants of the said manor, of the other part.

2. WHEREAS at a court baron, or customary court, holden in or
 for the said manor of A., in the county of B., on the day
 of , in the year 18 , the said (*tenant*) was admitted tenant
 of the copyhold hereditaments and premises hereinafter more par-
 ticularly mentioned and described, with their appurtenances; TO
 HOLD unto the said (*tenant*), his heirs and assigns, according to the
 custom of the said manor, subject to the rents, duties, suits and
 services therefore due and of right accustomed.

3. AND WHEREAS the said (*lord*) hath agreed with the said
 (*tenant*) for the absolute sale to him of the fee simple and inheri-
 tance in possession of the said hereditaments and premises, to which
 the said (*tenant*) was so admitted tenant as aforesaid, free from
 all incumbrances, and absolutely enfranchised, for the price of
 750*l*.

No. XIV.

Enfranchise-
ment of a
Copyholder, and
Grant of
Common.

Testatum.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of 750*l.* sterling, this day paid by the said (*tenant*) to the said (*lord*), the receipt whereof the said (*lord*) hereby acknowledges, and therefrom doth release the said (*tenant*), his heirs, executors, administrators and assigns, HE the said (*lord*), DOTH, by these presents, grant, release, and confirm unto the said (*tenant*) and his heirs, ALL, &c. [HERE DESCRIBE *the parcels*], together with all out-houses, edifices, buildings, barns, stables, yards, gardens, orchards, ways, paths, passages, waters, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, hedges, ditches, fences, mounds, bounds, liberties, easements, profits, privileges, commodities, advantages and appurtenances whatsoever, to the said messuage or tenement, lands and hereditaments, hereby granted and released, or any of them, or any part thereof respectively, belonging or appertaining; or accepted, reputed, deemed, taken, known, held, occupied, or enjoyed, as part, parcel, or members thereof, or of any part thereof; AND all the estate, right, title and interest, both legal and equitable, of him the said (*lord*), of, in, to, out of or upon the said hereditaments and premises, and every or any part thereof, with the appurtenances.

Habendum to
purchaser in fee
enfranchised.

5. TO HAVE AND TO HOLD the said messuage or tenement, lands, hereditaments, and all and singular other the premises hereinbefore described and hereby granted and released, with their appurtenances, unto the said (*tenant*), his heirs and assigns, TO THE ONLY PROPER USE AND BEHOOF of the said (*tenant*), his heirs and assigns for ever, freely and absolutely enfranchised, and by these presents acquitted, exonerated, and for ever discharged of and from all, and all manner of yearly and other payments, rents, quit-rents, chief-rents, or customary or copyhold rents, fines, heriots, suits and services, and all other customary or copyhold payments, duties, suits, services or customs whatsoever, which by or according to the custom of the said manor of A., the said messuage or tenement, lands, hereditaments and premises, hereby granted and released, or any of them, is, or are, or have, or hath been, or ought otherwise to be subject or liable to, or charged or chargeable with, or which otherwise ought to be paid, done, or performed, for or in respect of the same messuage or tenement, lands, here-

ditaments and premises, or any of them, or any part thereof, as copyhold premises holden of, or as parcel of, the same manor.

No. XIV.

*Enfranchise-
ment of a
Copyholder, and
Grant of
Common.*

6. PROVIDED ALWAYS, and the true intent and meaning of these presents, and of the parties hereto, is, that these presents, or any clause, matter, or thing herein contained, shall not extend, or be construed to extend, to enfranchise, or make free, the remaining or any part of the several copyhold lands or tenements not hereinbefore granted, or now or late of him the said (*tenant*), nor to acquit or discharge the said remaining, or other parts, from any payments, rents, quit-rents, fines, heriots, fealty, suit of court, or any other payments, duties, customs, suits or services, which by the custom of the aforesaid manor, the said respective copyhold lands or tenements, or any of them, have at any time heretofore been subject or liable to, or charged with, or which have been or ought to be paid, done, or performed, for and in respect of the aforesaid lands or tenements, as copyhold and parcel of the said manor.(a)

Proviso that preceding grant shall not be construed to extend to enfranchise copyholds not therein included.

7. AND THIS INDENTURE FURTHER WITNESSETH, that it being the intention of the parties hereto, that the said (*tenant*) and his heirs should for ever use and enjoy the same commonage, in and upon all and every the wastes, commons, and commonable lands of and belonging to the said (*lord*), as lord of the said manor of A., notwithstanding the enfranchisement of the said messuage or tenement, lands, hereditaments and premises, to all intents and purposes, as he the said (*tenant*), heretofore hath been, and now is, entitled to, by reason of the said copyhold premises intended to be hereby enfranchised, and to the end that such commonage may be the more effectually secured and conveyed to the said (*tenant*), HE the said (*lord*), for the considerations aforesaid, and in performance of the said agreement, DOTH, by these presents, grant and confirm unto the said (*tenant*) and his heirs, ALL commonage, right and title of common of what nature soever, of, in, upon, to, or out of all and every the wastes, commons, and commonable lands, of or belonging

Grant of right of common.

(a) If the tenant has no other copyhold lands which he holds of the lord, this clause may be omitted. Practical suggestions.

No. XIV. *Enfranchisement of a Copyholder, and Grant of Common.* to him the said (*lord*), as lord of the said manor of A. as aforesaid; and that in as large, ample and beneficial a manner, to all intents and purposes, as he the said (*tenant*) could have exercised, claimed, or demanded, or in anywise have been entitled to, as a copyhold tenant, owner, or occupier, if these presents had not been made and executed, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. [INSERT HERE *usual covenants for title, ut ante*, No. I., clauses 8, 9, 10, pp. 49, 51; and then add the recital and covenant to produce title deeds, *ut ante*, No. X., clause 10, p. 76.

IN WITNESS, &c.

No. XV.

CONVEYANCE OF TITHES TO DOWER USES, WITH USUAL COVENANTS FOR TITLE.

- | | |
|--|---|
| 1. Parties.
2. Recital of conveyance to vendor to dower uses.
3. That tithes have been commuted at a rent-charge of 300 <i>l</i> .
4. Of agreement to sell.
5. Testatum, by which vendor appoints.
6. Further testatum, by which vendor grants. | 7. Habendum to purchaser to dower uses.
8. Declaration to debar widow of dower.
9. Covenant from vendor that he has good right to grant.
10. For quiet enjoyment, and freedom from incumbrances.
11. For further assurance. |
|--|---|

1. THIS INDENTURE, made the day of A.D. 18 , Parties.
 BETWEEN (*vendor*) of, &c., of the first part, (*purchaser*) of, &c.,
 of the second part, and (*dower trustee*) of, &c., of the third part.

2. WHEREAS by indenture dated on or about the day Recital of
 of , and made between (*former vendor*) esquire, of the first conveyance to
 part, the said (*vendor*) of the second part, and (*vendor's dower vendor to dower*
trustee) of the third part, the tithes and hereditaments hereinafter uses.
 described, and hereby granted and released, were conveyed and
 assured and now stand limited, *to such uses*, upon such trusts, and
 for such ends, intents and purposes, and under and subject to such
 powers, provisoes and declarations, as the said (*vendor*) by any
 deed or deeds, writing or writings, to be by him sealed and
 delivered in the presence of one or more credible witness or wit-
 nesses, should from time to time direct, limit or appoint; and in
 default of and until such direction, limitation or appointment, and
 so far as any such direction, limitation or appointment if incom-
 plete should not extend, *to the use* of the said (*vendor*) and his assigns

No. XV. *Conveyance of Tithes to Dower Uses, with usual Covenants for Title.* for the term of his natural life, without impeachment of waste; with a limitation to the use of the said (*vendor's dower trustee*); his executors, administrators and assigns, during the life of the said (*vendor*), in trust for the said (*vendor*) and his assigns, with the ultimate limitation to the use of the said (*vendor*), his heirs and assigns for ever.

That tithes have been commuted at a rent-charge of 300*l.*

3. AND WHEREAS in pursuance of the acts for the commutation of tithes in England and Wales, (*a*) the said tithes have been commuted at the price of 300*l.* per annum, as the gross rent-charge made payable to the said (*vendor*) in lieu of the said tithes, as by reference to the aforesaid rent-charge will more fully appear.

Of agreement to sell.

4. AND WHEREAS the said (*vendor*) has agreed to sell the said tithes and rent-charge, hereditaments and premises, free from all incumbrances, to the said (*purchaser*) for the sum of 6,750*l.*

Testatum, by which vendor appoints.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of 6,750*l.* sterling, this day paid by the said (*purchaser*) to the said (*vendor*), the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth by these presents acquit, release, and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, the said (*vendor*), in exercise of the power reserved

Practical observations upon the effect and operation of the recent Tithe Commutation Acts.

(*a*) The recent Tithe Commutation Acts (6 & 7 Will. 4, c. 71; 7 Will. 4 and 1 Vict. c. 69; 1 & 2 Vict. c. 64; 2 & 3 Vict. c. 32), by substituting a rent-charge in lieu of tithes, and also conferring a power of distress, have removed in a great measure the disadvantages attending property of this description. The rent-charge, under the tithe apportionment acts, is apportioned in the following manner: first, it is directed that the total sum to be paid by way of rent-charge shall be apportioned amongst the several lands in the parish having regard to the average tithe, and productive quality of the lands; so that in each case the several lands shall have the full benefit of every modus and composition real, prescriptive, and customary payments, and of every exception from or non-liability to tithes relating to the said lands respectively, and having regard to the several tithes to which the said lands are severally liable: (6 & 7 Will. 4, c. 71, s. 33.) The rent-charge intended to be charged upon any lands, before the confirmation of the apportionment, at the owner's request, is to be specially apportioned upon particular lands, in such manner as he, with the consent of the tithe-owner, may direct: (sect. 58.) The apportionment may be altered at the request of the land owners by the commissioners of the land tax, with the consent of two justices.

to him by the said hereinbefore recited indenture, and of every other power enabling him thereunto, DOTH by this present deed, sealed and delivered by him in the presence of and attested by the credible witness whose name is intended to be hereupon endorsed as such witness, absolutely and irrevocably direct, limit and appoint, that all and singular the said tithes, rent-charge in lieu of tithes, hereditaments and premises hereinbefore mentioned and hereinafter described, shall from henceforth be and enure to the uses, upon the trusts, and for the ends, intents and purposes hereinafter limited, expressed and declared.

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 Tithes to Dower
 Uses, with
 usual Covenants
 for Title.*

6. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, the said (*vendor*) DOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL and every the tithes and tenths of corn and grain, and all other the great and sheaf tithe, oblations and emoluments of the rectory, and appropriation of the rectory of A. in the said county of B., and yearly or otherwise arising, growing, increasing or happening out of, upon, or belonging to the same; and also all moduses, commutations for tithes, rent-charge in lieu of tithes, with all such powers of distress and entry in case of nonpayment of the said yearly sum of 300*l.* so commuted, by way of rent-charge in lieu of tithes as aforesaid, in case of the nonpayment of the same, as in or by the aforesaid rent-charge are given or provided for enforcing the due payment and recovery thereof, (*b*)

Further
 testatum, by
 which vendor
 grants.

(*b*) Tithes could not have been distrained for at the common law; for being an incorporeal hereditament they were considered as having no locality: (Noy. Max. 112; Stat. Marl. 52 Hen. 3, c. 15; 3 Inst. 131.) But although a tithe-owner had no remedy by distress, he might have maintained debt for the tithes against the lessees, a rule which extended equally to lay impropriators as to ecclesiastics; the statute 32 Hen. 8, c. 7, s. 7, having put tithes in the hands of lay impropriators upon the same footing with respect to any of their incorporeal hereditaments, and turned them, as it were, into lands and tenements; from whence it necessarily seems to follow, that since the passing of the above-mentioned statutes, a lessor of tithes had the same remedies except as to the power of distraining for them, as any other lessor of incorporeal hereditaments: (*Talentine v. Denton*, Cro. Jac. 111; *Tippin v. Gover*, Sir T. Raym. 18; *Thursby v. Plant*, 1 Wms. Saund. 304.) Still this point does not seem to have been solemnly determined until the case of *Bally v. Wells*, 3 Wils. 25. In that case an action of covenant was brought by a rector of a parish against the assignee of his lessee for years of his tithes, who had covenanted for himself and his heirs, executors and assigns, not to let to any of the farmers of the parish without the plaintiff the lessor's consent; and the breach was, that the defendant's assignee, after the premises came to him by assignment, let some farmers of the parish

Remedies for
 enforcing the
 payment of
 tithes.

Bally v. Wells,
 3 Wils. 25.

No. XV. AND all privileges and appurtenances to the same belonging;

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AND all the estate, right, title and interest, both legal and equitable, of the said (*vendor*) therein; TOGETHER with the map

have part of the tithes without the plaintiff's consent. After verdict for the plaintiff, it was objected in arrest of judgment that the action did not lie against the assignee, for it was a mere personal covenant, binding on the lessee only, and that the tithes were incorporeal, lying in grant, and therefore such a covenant ran along with them, as it would with lands which lie in livery; and that a rent could not be reserved out of them, for if a lease were made of them for years, it was good, by way of contract, to have an action of debt against the lessee, but that the lessor could not distrain, and that the assignee of the tithes was not chargeable with the rent, and consequently that the defendant could not be chargeable with the breach of covenant in that case. But it was answered and resolved by the court, that the action was maintainable against the assignee; for as to the objection that tithes were incorporeal, and therefore the assignee was not bound, they answered that tithe was the tenth part of the profits of the land; the profits of the land was the land itself; tithes were tangible and visible; might be put in view in assize, an ejectment lay for them, a *præcipe quod reddat* lay for a portion of tithes, and they were realized by stat. 32 Hen. 8, c. 7, s. 7; a warranty might be annexed to incorporeal inheritance, and they had every property of an inheritance in land, except that they lie in grant and not in livery. And as to the objection that a lease of tithes was not good, and that the assignee was not chargeable with the rents, they cited the argument of Saunders in the case of *The Dean and Chapter of Windsor v. Gover*, above referred to, which they said was an exceedingly good one, and with which they concurred, and they said that debt lay for rent reserved upon a lease for tithes at common law: (see also 1 Hughes Pract. Mort. 312.)

Summary process to enforce payment of tithes.

Rent-charge in lieu of tithes may now be distrained for.

And although tithes could not have been distrained for at common law, still by certain acts of Parliament (7 & 8 Will. 3, c. 34; 1 Geo. 1, stat. 2, c. 6; 53 Geo. 3, c. 127, s. 6; 5 & 6 Will. 4, c. 74), a summary process was given to justices to enforce the payment of tithes against Quakers. And by statute 6 & 7 Will. 4, c. 71, ss. 81, 82, a power of distress was given for the recovery of the rent-charge in lieu of tithes, in the same manner as for the recovery of rent upon ordinary leases of landed property; it being thereby enacted, that in case the said rent-charge shall be in arrear and unpaid for the space of twenty-one days next after any half-yearly day of payment, it shall be lawful for the person entitled to the same, after having given or left ten days' notice in writing at the usual or last known residence of the tenant in possession, to distrain upon the lands liable to the payment thereof, or on any part thereof, for all arrears of the said rent-charge, and to dispose of the distress when taken, and otherwise to act and demean himself in relation thereto, as any landlord may for arrears of rent on a common lease for years; provided that not more than two years' arrears shall at any time be recoverable by distress: (sect. 81.)

Writ of *hab. fac. pos.* may issue where there is no sufficient distress.

It is also further enacted, that in case the said rent-charge shall be in arrear and unpaid for the space of forty days next after any half-yearly day of payment, and there shall be no sufficient distress on the premises liable to the payment thereof; it shall be lawful for any judge of His Majesty's Court of Record at Westminster, upon affidavit of the facts, to order a writ to be issued to the sheriff of the county in which the lands chargeable with the rent-charge are situated, requiring the said sheriff to summon a jury to assess the arrears of rent-charge remaining unpaid, and to return an inquisition thereupon, taken to some one of Her Majesty's courts of law at Westminster, on a certain day therein to be named, either in term time or in vacation; a copy of which writ, and notice of the time and place of executing the same, shall be given to the owner of the land, or left at his last known place of abode, or with his known agent previously to the execution thereof; and the sheriff is thereby required to execute such writ according to the exigency thereof; and the costs of such inquisition

or apportionment of the said tithes, (c) and all other deeds, evidences and writings relating to the title thereof, in the custody, possession, or power of the said (*vendor*), or which he can obtain without suit.

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Tithes to Dowry
Uses, with
usual Covenants
for Title.*

7. TO HAVE AND TO HOLD the said tithes, rent-charge in lieu of tithes, and all and singular other the premises hereinbefore mentioned, and hereby granted, with their appurtenances, unto the said (*purchaser*) and his heirs, *to such uses*, upon such trusts, and for such ends, intents and purposes as the said (*purchaser*) shall from time to time or at any time by deed or deeds appoint; and in default of such appointment, and in the meantime subject thereto, *To the use* of the said (*purchaser*) and his assigns for and during the term of his natural life, without impeachment of waste, and from and immediately after the determination of that estate by any means in his life-time, *To the use* of the said (*purchaser's dower trustee*), his executors and administrators, during the life of, and *in trust* for the said (*purchaser*) and his assigns; and from and immediately after the determination of the said hereinbefore lastly

*Habendum to
purchaser to
dower uses.*

shall be taxed by the proper officer of the court, and thereupon the owner of the rent-charge may sue out a writ of *habere facias possessionem*, directed to the sheriff, commanding him to cause the owner of the rent-charge to have possession of the lands chargeable therewith, until the arrears of the rent-charge found to be due, and the said costs, and also the costs of such writ and executing the same, and of cultivating and keeping possession of the lands, shall be fully satisfied; PROVIDED ALWAYS, that not more than two years' arrears over and above the time of such possession shall be at any time recoverable: (sect. 38.) And this power of distress and entry is made to extend to all the lands within the parish, occupied by the owner and under the same holding: (sect. 85.) And it is also further enacted that the several provisions of an act passed in the fourth and fifth years of the reign of King William the Fourth, intituled "An Act to amend an Act of the Eleventh Year of the Reign of King George the Second, respecting the Apportionment of Rents, Annuities, and other periodical Payments," shall extend to all rent-charges under this act.

(c) The Tithe Apportionment Act directs that a draught shall be made of every apportionment, stating the name, description, and true estimated quantity in statute measure of the several lands to be comprised in such apportionment, with the names and descriptions of the proprietors and occupiers: as also of the land, viz., whether they are cultivated as arable, meadow, or pasture land, or as woodland, common land, or howsoever otherwise; and to refer to a number set against a description of such lands to a map or plan, which draught is to state the amount charged upon the said several lands, and to whom and in what right the same shall be respectively payable: (sect. 33.) The apportionment map, therefore, forms a most important document of title in the case of tithes, and should necessarily accompany the title deeds and evidences of title, and as such be delivered over with them to the purchaser or mortgagee: (1 Hughes Pract. Mort. 314.)

*As to the Tithe
Apportionment
Act.*

No. XV. limited estate, *To the use* of the said (*purchaser*), his heirs and assigns for ever.

Conveyance of
Tithes to Dower
Uses, with
usual Covenants
for Title.

Declaration to
debar widow
of dower.

8. AND it is hereby declared that no widow of the said (*purchaser*) shall be entitled to dower out of the said tithes, rent-charge in lieu of tithes, hereditaments and premises hereby granted.

Covenant from
vendor that he
has good right
to grant.

9. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act done or permitted by him the said (*vendor*) to the contrary) he the said (*vendor*) now hath in himself good right to convey and assure the said tithes, rent-charge in lieu of tithes, hereditaments and premises hereby granted, to the uses and in manner aforesaid, according to the true intent and meaning of these presents.

For quiet
enjoyment and
freedom from
incumbrances.

10. AND ALSO that (notwithstanding any such act or thing as aforesaid) the same tithes, rent-charge, hereditaments and premises shall or may, from time to time and at all times, be peaceably and quietly held and enjoyed according to the uses hereinbefore declared concerning the same, without let, suit, eviction, interruption or disturbance, of or by the said (*vendor*) or any other person or persons whomsoever rightfully claiming under or in trust for him, or by or through his acts, deeds, defaults, privity or procurement; and that freely, clearly and absolutely indemnified by the said (*vendor*) his heirs, executors or administrators, of, from and against all former and other estates, rights, titles, liens, charges and incumbrances whatsoever, made or suffered by the said (*vendor*), or any other person whomsoever rightfully claiming under or in trust for him, or by or through his acts, deeds, defaults, privity or procurement.

For further
assurance.

11. AND MOREOVER that the said (*vendor*) and all persons whomsoever rightfully claiming any estate or interest, legal or equitable, in the said tithes, rent-charge in lieu of tithes, hereditaments and premises hereby granted, under or in trust for him, shall and will, from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his appointees, heirs or

assigns, make, do, acknowledge, enter into, execute and perfect, all such further and other lawful and reasonable acts and assurances in the law whatsoever, for the further, better, or more perfectly or satisfactorily granting, assuring, and confirming the said tithes, rent-charge in lieu of tithes and hereditaments, with their privileges and appurtenances, to the uses and in manner aforesaid, according to the true intent and meaning of these presents, as the said (*purchaser*), his appointees, heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

No. XV.

—
*Conveyance of
 Tithes to Dower
 Uses, with
 usual Covenants
 for Title.*
 —

IN WITNESS, &c.

No. XVI.

CONVEYANCE AND MORTGAGE BY THE SAME INSTRUMENT,
WHERE PART OF THE PURCHASE MONEY IS INTENDED TO
REMAIN ON MORTGAGE.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of intended purchase, and of agreement that part of the purchase money is to remain on mortgage. 3. Testatum. 4. Habendum to purchaser to the use of vendor. 5. Proviso for redemption and reconveyance on payment of remaining purchase money and interest. 6. Power of sale. 7. Proviso that power of sale shall not debar vendor from his remedies by foreclosure. 8. Covenant from vendor that he has good right to convey. | <ol style="list-style-type: none"> 9. That purchaser shall enjoy until default. 10. That vendor will not exercise power of sale without giving six months' previous notice. 11. Covenant from purchaser to pay mortgage money and interest, and in the meantime to pay interest half-yearly, with general covenants for title. 12. Proviso that if power of sale shall be exercised, purchaser on concurring in conveyance and entering into qualified covenants, to be released from absolute covenants previously entered into. |
|---|---|

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*vendor*) of, &c., of the one part, and (*purchaser*) of,
&c., of the other part.

Recital of
intended pur-
chase, and of
agreement that
part of the
purchase money
is to remain
on mortgage.

2. WHEREAS the said (*purchaser*) has contracted with the said
(*vendor*) for the purchase of the fee-simple and inheritance of the
hereditaments and premises hereinafter described, and which are
intended to be hereby granted and released for the price of 2,000*l.*,
and upon the treaty for the said purchase it was agreed that the
sum of 1,000*l.*, being one moiety of the said purchase money,

should be allowed to remain by way of mortgage on the said premises.

No. XVI.

Conveyance and Mortgage by the same Instrument, where part of the Purchase Money is to remain on Mortgage.

3. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of 1,000*l.* sterling, this day paid by the said (*purchaser*) to the said (*vendor*), the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth by these presents release and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; AND ALSO in consideration of the further sum of 1,000*l.* sterling, being the remaining moiety of the said purchase money, to be secured upon mortgage of the said hereditaments and premises in manner hereinafter mentioned, HE the said (*vendor*) DOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c., [HERE DESCRIBE *parcels*, and INSERT *general words, all-estate clause, ut ante*, No. I., clause 5, p. 16; but omitting the *all-deeds clause*.]

Testatum.

4. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs, TO THE USE of the said (*vendor*), his heirs and assigns for ever; NEVERTHELESS upon the trusts, and for the ends, intents and purposes, and with, under and subject to the powers, provisoes, declarations and agreements hereinafter limited, expressed and declared of and concerning the same (that is to say),

Habendum to purchaser to the use of vendor.

5. UPON TRUST to permit the said (*purchaser*), his heirs and assigns, to hold and enjoy, and to receive and take, the rents, issues and profits of the said hereditaments and premises, until the day of next, and if the said (*purchaser*), his heirs, executors or administrators shall on that day pay unto the said (*vendor*), his executors, administrators or assigns, the sum of 1,000*l.* sterling, being the remainder of the said purchase money, with interest for the same at the rate of 4*l.* for every 100*l.* by the year, without deduction, then, immediately after such payment the said (*vendor*), his heirs or assigns, will, at the request and costs of the said (*purchaser*), his heirs or assigns, convey and

Proviso for redemption and reconveyance on payment of remainder of purchase money and interest.

No. XVI.

*Conveyance
and Mortgage
by the same
Instrument,
where part of
the Purchase
Money is to
remain on
Mortgage.*

Power of sale.

assure the said hereditaments and premises unto and to the use of the said (*purchaser*), his heirs or assigns, or otherwise as he or they shall direct, free from all incumbrances occasioned by the said (*vendor*), his heirs or assigns, in the meantime.

6. PROVIDED ALWAYS that if default shall be made in payment of the said sum of 1,000*l.*, and the interest thereof, or any part of the same respectively, at the time hereinbefore appointed for payment thereof, contrary to the aforesaid proviso and the true intent and meaning of these presents, *then* and in such case, and at any time thereafter, it shall be lawful for the said (*vendor*), his heirs, executors, administrators or assigns, and without the concurrence, and even against the express consent of the said (*purchaser*), his heirs or assigns, to make sale and absolutely dispose of the said hereditaments and premises, by public auction or private contract, either together or in parcels, in such manner as the said (*vendor*), his heirs, executors, administrators or assigns shall think fit, and for such price as to him or them shall seem reasonable, and subject or not subject to any special or other conditions or stipulations relative to the title, or evidence of title, or otherwise as shall appear expedient; with liberty for him or them to buy in and resell the same hereditaments and premises at any future sale or sale, without being responsible for any loss that may be incurred thereby; AND ALSO with full power for him or them to rescind and annul, or alter and vary, the terms, conditions and stipulations of any contract which may be entered into for the sale of the said hereditaments and premises, or any part thereof, without being responsible for any loss that may be thereby occasioned. AND IT IS HEREBY DECLARED, that the receipt or receipts in writing of the said (*vendor*), his heirs, executors, administrators or assigns, or of his or their agent or agents, to any purchaser or purchasers of the said hereditaments and premises under the power of sale hereinbefore contained, shall effectually exonerate such purchaser or purchasers paying the same from all responsibility with respect to the application of the purchase moneys therein expressed to have been received; nor shall such purchaser or purchasers be obliged to inquire or take notice whether any sale or sales is or are necessary or proper for any of the purposes hereinbefore expressed, or whether any such default has been

made in payment as aforesaid. AND IT IS HEREBY DECLARED, that in case the said hereditaments and premises or any part of the same shall be sold under the power of sale hereinbefore contained, the said (*vendor*), his heirs, executors, administrators or assigns, shall, out of the purchase moneys arising therefrom, in the first place discharge all such costs as he or they shall have incurred in or about the said sale or sales, or in relation thereto; and in the next place shall retain the said sum of 1,000*l.* and interest, hereby secured, or so much thereof as shall then be undischarged; and shall pay over the surplus moneys (if any) to the said (*purchaser*), his heirs, executors, administrators or assigns.

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Conveyance
and Mortgage
by the same
Instrument,
where part of
the Purchase
Money is to
remain on
Mortgage.

Application
of purchase
moneys.

7. PROVIDED ALSO, that the said (*vendor*), his heirs, executors, administrators and assigns, shall, notwithstanding the power of sale hereinbefore contained, and concurrently therewith, have all the rights and remedies of foreclosure or otherwise as a mortgagee in ordinary cases.

Proviso that
power of sale
shall not debar
vendor of his
right of
foreclosure.

8. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act done or permitted by the said (*vendor*), or any of his ancestors or testators to the contrary,) the said (*vendor*) now hath in himself good right to convey the said hereditaments and premises hereby granted and released, to the uses and in manner aforesaid. [HERE INSERT *qualified covenants for quiet enjoyment; freedom from incumbrances; and for further assurance, ut ante*, No. II., clauses 6, 7, *ante*, p. 54.]

Covenant from
vendor that he
has good right
to convey.

9. AND MOREOVER that until default shall be made in payment of the said sum of 1,000*l.* and interest, at the time and in manner aforesaid, the said (*purchaser*), his heirs and assigns, shall hold and enjoy, and receive and take, the rents, issues and profits of the said hereditaments and premises, without interruption or denial by the said (*vendor*), his heirs or assigns, or any other person or persons whomsoever rightfully claiming under or in trust for him.

That purchaser
shall enjoy until
default.

10. AND ALSO that the said (*vendor*), his heirs, executors, That *vendor*

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*Conveyance
and Mortgage
by the same
Instrument,
where part of
the Purchase
Money is to
remain on
Mortgage.*

administrators or assigns, will not exercise the power of sale hereinbefore contained without giving six calendar months' previous notice thereof, in writing, to the said (*purchaser*), his heirs or assigns, or leaving the same at his or their last or usual place of abode in England; PROVIDED NEVERTHELESS, that no purchaser under such power of sale shall in anywise be affected or prejudiced thereby.

will not exercise power of sale without giving six months' previous notice. Covenant from purchaser to pay mortgage money and interest, and in the meantime to pay interest half-yearly, with general covenants for title.

For quiet enjoyment.

Freedom from incumbrances.
For further assurance.

11. AND the said (*purchaser*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*vendor*), his heirs, executors, administrators and assigns, that he the said (*purchaser*), his heirs, executors or administrators, will punctually and truly pay unto the said (*vendor*), his executors, administrators or assigns, the sum of 1,000*l.* sterling, together with interest for the same at the rate of 4*l.* for every 100*l.* by the year, at the time and in manner hereinbefore appointed for the payment thereof; AND ALSO that in case the said principal sum of 1,000*l.*, or any part of the same, shall remain unpaid after the said day of , then the said (*purchaser*), his heirs, executors, administrators or assigns, will, from time to time and at all times during the continuance of this mortgage security, pay unto the said (*vendor*), his executors, administrators or assigns, the interest for the said sum of 1,000*l.* at the rate of 4*l.* for every 100*l.* by the year, by equal half-yearly payments, on the day of and the day of without deduction. AND FURTHER, that the said hereditaments and premises shall be held and enjoyed according to the limitations and provisions hereinbefore contained, without any let, suit, eviction, ejection, interruption, molestation or denial of or by the said (*purchaser*), or any person or persons whomsoever; and that free from all incumbrances whatsoever; AND MOREOVER, that the said (*purchaser*), and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises, shall and will, from time to time and at all times hereafter, at the request of the said (*vendor*), his heirs, executors, administrators or assigns, but at the costs of the said (*purchaser*), his heirs, executors, administrators or assigns (until the exercise of the aforesaid power of sale or the absolute foreclosure of the equity of redemption of the said premises, and afterwards at the costs of the parties requiring the same), make,

do, acknowledge, enter into, execute and perfect all such further assurances for the more perfectly or satisfactorily assuring and confirming the said hereditaments and premises, with their appurtenances, unto and to the use of the said (*vendor*), his heirs and assigns, according to the true intent and meaning of these presents, as the said (*vendor*), his heirs or assigns, or his or their counsel in the law, shall require.

No. XVI.

*Conveyance
and Mortgage
by the same
Instrument,
where part of
the purchase
Money is to
remain on
Mortgage.*

12. PROVIDED ALWAYS, that if the said hereditaments and pre-
mises or any part of the same shall be sold under the power of
sale hereinbefore contained, and the said (*purchaser*), his heirs or
assigns, shall join in the conveyance to the purchaser, and thereby
enter into such qualified covenants for title, quiet enjoyment, free-
dom from incumbrances, and for further assurance, as a purchaser
under ordinary circumstances is entitled to require, then the abso-
lute covenants hereinbefore entered into by the said (*purchaser*)
in relation to the hereditaments so sold, shall from thenceforth
become utterly void to all intents and purposes whatsoever.

Proviso that if
power of sale
shall be
exercised,
purchaser on
concurring in
conveyance and
entering into
qualified
covenants, to be
released from
the absolute
covenants
previously
entered into.

IN WITNESS, &c.

No. XVII.

CONVEYANCE IN FEE BY VENDOR AND HIS MORTGAGEE;
THE LATTER CONCURRING FOR THE PURPOSE OF SURRENDERING A TERM LIMITED TO HIM AS HIS MORTGAGE SECURITY.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of conveyance to vendor to uses to bar dower. 3. Of mortgage by appointment and demise for 1,000 years. 4. Of contract to sell. | <ol style="list-style-type: none"> 5. That principal is still due, but that all interest has been paid. 6. Testatum, by which vendor conveys, and mortgagee surrenders. 7. Covenant from mortgagee that he has done no act to incur. |
|---|---|
-

Parties.

1. THIS INDENTURE, made the day of A.D., 18 ,
BETWEEN (*vendor*) of, &c., of the first part, (*mortgagee*), of, &c.,
of the second part, (*purchaser*), of, &c., of the third part, and
(*purchaser's dower trustee*), of, &c., of the fourth part.

Recital of
conveyance to
vendor to uses
to bar dower.

2. WHEREAS by indenture of release dated on or about the
29th day of May, in the year 1848, expressed to be made in pur-
suance of the act for rendering a release as effectual for the con-
veyance of freehold estates as a lease and release by the same
parties, (*a*) between (*former vendor*), of the first part, the said

Practical
observations on
the statutes
dispensing with
release for a
year.

(*a*) The statute of the 4 & 5 Vict. c. 21, which renders a release as effectual for the conveyance of freehold estates as a lease and release between the same parties, requires that reference should be made to the act in the deed of release, which must be expressed to be made in pursuance of it: (2 Hughes Pract. Sales, 244.) This was done either by referring to the act at the commencement of the deed, as by expressing it to be made "in pursuance of an act," &c., or by stating in the granting clause that the releasor "DOTH by these presents made in pursuance of an act," &c. The necessity for this reference was however abolished by a subsequent act (7 & 8 Vict. c. 76), which, although afterwards repealed, the very act repealing it declares that all corporeal tenements and hereditaments, as far as regards the immediate freehold, shall lie in grant as well as in livery, so that now every species of real property may be conveyed

(*vendor*), of the second part, and (*vendor's dower trustee*), of the third part, the hereditaments and premises hereinafter described, and which are intended to be hereby granted and released, with their appurtenances, were limited to such uses as the said (*vendor*) should by deed appoint; and in default of appointment, to the use of the said (*vendor*), and his assigns for life, with a limitation to the use of the said (*vendor's dower trustee*), and his heirs, (*b*) during the life of and in trust for, the said (*vendor*) and his assigns; with the ultimate limitation to the use of the said (*vendor*), his heirs and assigns for ever.

No. XVII.

Conveyance in fee by *Vendor*, the *Mortgagee* of a term concurring for the purpose of surrendering the same.

3. AND WHEREAS by indenture dated on or about the 30th day of May, in the year 1848, made between the said (*vendor*), of the one part, and the said (*mortgagee*), of the other part, the said (*vendor*), in exercise of the power limited to him by the said hereinbefore recited indenture of release, appointed and demised the said hereditaments and premises, with the appurtenances, unto the said (*mortgagee*), his executors, administrators and assigns, from thenceforth for the term of 1,000 years, subject to a proviso for making void the said term, on payment by the said (*vendor*), his heirs, executors, administrators and assigns, unto the said (*mortgagee*), his executors, administrators or assigns, of the sum of 2,000*l.* and interest, at the rate of 4*l.* for every 100*l.* by the year, on the 30th day of November then next; but in payment whereof default was made.

Of mortgage by appointment and demise for 1,000 years.

4. AND WHEREAS the said (*vendor*) has contracted to sell the

Of contract to sell.

by deed of grant (a species of assurance that was formerly only adapted to incorporeal hereditaments, as rent-charges, advowsons, or the like), as might previously have passed by lease and release, or a release under the act of the 4th of Victoria, referring to that act. Still for all this, many cautious practitioners continued to state the assurance to be made in pursuance of the act, whilst others adopting a kind of middle course, have expressed the conveyance to be made, "as well in pursuance as independently of an act," &c. But there is no necessity whatever for this reference in a deed of grant and release, under the statute of 8 & 9 Vict. c. 106, and it is apprehended that the practice of continuing it, which arose in a great measure from the then existing uncertainty of the law, will soon grow into disuse. At the same time, whenever a deed is to be recited which is described to have been made in pursuance of the statute of 4 Victoria, it should be so stated in the recitals, and more particularly so if made at a time when a reference to the act was essential to the operation of the deed.

(*b*) See observations as to limitations to the dower trustee and his heirs, *ante*, p. 46, note (*f*).

No. XVII.

—
*Conveyance in
 fee by Vendor,
 the Mortgagee
 of a term
 concurring for
 the purpose of
 surrendering
 the same.*

—
 That principal
 is still due but
 that all interest
 has been paid.

said hereditaments and premises, and the fee-simple and inheritance thereof, free from all incumbrances, to the said (*purchaser*) for the sum of 2,998*l*.

5. AND WHEREAS the said principal sum of 2,000*l*. still remains due and owing to the said (*mortgagee*), upon his said hereinbefore recited mortgage security, but all interest for the same has been paid up to the day of the date hereof, as the said (*mortgagee*) doth hereby acknowledge.

Testatum, by
 which mort-
 gagor conveys
 and mortgage
 surrenders.

6. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 2,000*l*. sterling, paid by the said (*purchaser*) to the said (*mortgagee*), (at the request and by the direction of the said (*vendor*), testified by his being a party hereto,) the receipt of which said sum of 2,000*l*., and that the same is in full satisfaction and discharge of all moneys due to him in respect of his said mortgage security, the said (*mortgagee*) hereby acknowledges, and therefrom doth release and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, and also the said (*vendor*), his heirs, executors and administrators; AND ALSO in consideration of the sum of 998*l*. sterling at the same time paid by the said (*purchaser*) to the said (*vendor*), the receipt of which said sum of 998*l*., and payment of the said sum of 2,000*l*. in manner aforesaid, making together the said sum of 2,998*l*., the purchase money of the said hereditaments and premises, the said (*vendor*) hereby acknowledges, and, therefrom doth release and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; HE the said (*mortgagee*), (at the request and by the direction of the said (*vendor*), testified as aforesaid,) and for the purpose of merging the said term of 1,000 years, DOTH by these presents surrender and assign, (c) and the said (*vendor*) DOTH by these presents

Practical
 observations.

(c) Formerly, in assurances to a purchaser in fee, in which a mortgagee for a term of years was a concurring party, the practice usually was to assign the term to a trustee for the purchaser, upon trust to attend the inheritance. The advantage of this course of proceeding was, that it would have protected the purchaser from all intermediate charges and incumbrances of which he had no notice (excepting crown debts by specialty), created between the time of granting the term, and the period of purchase: (*Higden v. Calamy*, 21 Car. 2; and

grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels and insert general words, ut ante*, No. I. clause 5, p. 45], AND all the estate, right, title and interest, both legal and equitable, of them the said (*vendor*) and (*mortgagee*) therein. AND ALSO all deeds, evidences and writings relating to the title of the said hereditaments and premises, in the custody or possession of the said (*vendor*) and (*mortgagee*), or either of them, or which the said (*vendor*) can procure without suit. [ADD *habendum to uses to bar dower; and declaration to debar widow of dower. AND ALSO covenants from vendor that he has good right to convey; for quiet enjoyment, and freedom from incumbrances, and for further assurance, ut ante*, No. I. clauses 6 to 10, inclusive, pp. 48 to 51.]

No. XVII.

Conveyance in fee by Vendor, the Mortgagee of a term concurring for the purpose of surrendering the same.

All-estate clause.
All-deeds clause.

7. AND the said (*mortgagee*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that he the said (*mortgagee*) hath not done or permitted any act whereby the said hereditaments and premises, or any part of the same, are, is, can, shall, or may be charged, incumbered, or prejudicially affected in any manner howsoever.

Covenant from mortgagee that he has done no act to incumber.

IN WITNESS, &c.

Wymonssel and Hawland, cited 2 Vern. 158; *Stanton v. Sadleir*, *ib.* 30; *Hitchcock v. Sedwick*, *ib.* 156; *Golborn v. Alcock*, 2 Sim. 225; *Finch v. Northworthy*, Finch, 102; *Willoughby v. Willoughby*, 1 T. R. 763; *Churchill v. Grove*, Nels. C. R. 91; 1 Saund. Uses, 275; 1 Mad. Pract. 507; 1 Hughes Pract. Sales, 209, 210.) But now, under the stat. 8 & 9 Vict. c. 112, all satisfied terms are made to cease after the 31st of December, 1845, so that the term which was vested in the mortgagee will, upon being satisfied by the paying off of the mortgage, cease by force of that statute, without any surrender or assignment of the same to the owner of the inheritance; hence an assignment to a trustee upon trust for the purchaser would now be perfectly useless, the term having determined with the mortgage assurance it was created to support, so that in point of fact nothing is left upon which the assignment could possibly operate.

No. XVIII.

CONVEYANCE IN FEE FROM MORTGAGOR TO A PURCHASER WHO HAS PURCHASED THE MORTGAGE DEBT OF A MORTGAGEE UNDER A DEMISE, AND OBTAINED AN ASSIGNMENT OF THE MORTGAGE TERM. (a)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of purchase of mortgage debt, and assignment of mortgaged premises. 3. That principal moneys are still due, and also an arrear of interest. 4. Of contract for purchase. | <ol style="list-style-type: none"> 5. Testatum. 6. Habendum to purchaser to dower uses. 7. Further testatum, by which purchaser releases mortgagor from all demands in respect of the mortgage. |
|--|--|

Parties.

1. THIS INDENTURE, made the day of A.D., 18 ,
BETWEEN (*mortgagor*) of, &c., of the first part, (*purchaser*) of, &c.,
of the second part, [and (*dower trustee*) of, &c., of the third part.](b)

Recital of
purchase of
mortgage debt,
and assignment
of mortgaged
premises.

2. WHEREAS by indenture dated the day of in the
year 18 , and made between (*mortgagee*), of the one part, and the
said (*purchaser*), of the other part, AFTER RECITING that the said
(*mortgagor*) was indebted to the said (*mortgagee*), in the sum of
1,000*l.*, for moneys advanced on the security of the messuage
and premises hereinafter described, and which had been demised to
the said (*mortgagee*) for the term of 2,000 years, by a certain inden-
ture therein recited, subject to a proviso for avoiding the same on
payment of the said sum of 1,000*l.* and interest, at the time and in

Practical
remarks.

(a) The money due in respect of the mortgage being considered the purchase money of the property, the *ad valorem* duty must be charged accordingly.

(b) If the limitation to the purchaser is to be simply in fee, the dower trustee must of course be left out of the deed.

manner therein mentioned, but in payment whereof default had been made; AND ALSO RECITING that the said principal sum of 1,000*l.* was still due from the said (*mortgagor*) to the said (*mortgagee*), together with a considerable arrear of interest amounting altogether to the sum of 75*l.*; AND further reciting that the said (*mortgagee*) had contracted to sell the said two several debts or sums of 1,000*l.*, and 75*l.*, to the said (*purchaser*) for the sum of 700*l.*; IT IS WITNESSED, that in consideration of the sum of 700*l.* paid by the said (*purchaser*) to the said (*mortgagee*), the said (*mortgagee*) did thereby assign unto the said (*purchaser*) the said two several debts or sums of 1,000*l.* and 75*l.*, and all interest thenceforth to accrue due on the said principal sum of 1,000*l.*, To HOLD the same unto the said (*purchaser*), his executors, administrators and assigns, from thenceforth absolutely and for ever; with usual powers of attorney for receiving and enforcing payment of the same. AND IT IS (by the now reciting indenture) FURTHER WITNESSED, that by way of an additional and collateral security for assuring unto the said (*purchaser*), his executors, administrators and assigns, the payment of the said two several sums of 1,000*l.* and 75*l.*, the said (*mortgagee*) did thereby assign unto the said (*purchaser*), the messuage and premises therein and hereinafter described, To HOLD the same, with the appurtenances, unto the said (*purchaser*), his executors, administrators and assigns, for all the then residue of the said term of 2,000 years, and for all other the estate, term and interest of him the said (*mortgagee*) therein, to and for his and their own use and benefit (*subject nevertheless* to such right or equity of redemption (if any) as the said (*mortgagor*), his heirs or assigns might be entitled to therein.)

No. XVIII.

Conveyance in
Fee from
Mortgagor to
a Purchaser of
the Mortgage
Debt of a
Mortgagee, &c.

3. AND WHEREAS the said principal sum of 1,000*l.* still remains due and owing upon the said hereinbefore recited mortgage security, and also the said sum of 75*l.* as such arrear of interest, together with a further arrear of interest upon the said sum of 1,000*l.*, amounting altogether to the sum of 55*l.*, as the said (*mortgagor*) doth hereby admit and acknowledge.

That principal
moneys are
still due, and
also an arrear
of interest.

4. AND WHEREAS an arrangement has been entered into between the said (*purchaser*) and (*mortgagor*), by which it has been agreed

Of contract for
purchase.

No. XVIII. *Conveyance in Fee from Mortgagor to a Purchaser of the Mortgage Debt of a Mortgagee, &c.* that the said (*mortgagor*) shall release the equity of redemption of the said messuage and premises, and convey the fee-simple and inheritance of the same, free from all incumbrances, unto the said (*purchaser*) in manner hereinafter mentioned, and that the said (*purchaser*) shall release the said (*mortgagor*) from the said several sums of 1,000*l.*, 75*l.*, and 55*l.*, and from the covenants and agreements contained in the said mortgage deed, and all other claims and demands whatsoever in respect of the said recited mortgage security.

Testatum. 5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of 5*s.* paid by the said (*purchaser*) to the said (*mortgagor*), on the execution hereof, the receipt of which is hereby acknowledged, HE the said (*mortgagor*) DOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*.] AND all rights, members and appurtenances whatsoever to the said hereditaments and premises belonging or appertaining, AND all the estate, right, title, and interest, both legal and equitable, of him the said (*mortgagor*) therein.

Habendum to purchaser to dower uses. 6. TO HAVE AND TO HOLD the said messuage or dwelling-house, garden, and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs. [CONTINUE *limitations to uses, and declaration to bar dower, ut ante*, No. I, clauses 6, 7, pp. 46, 48. IF *the property is to be limited simply in fee, substitute as follows*: "TO THE USE of the said (*purchaser*), his heirs and assigns for ever."]

Further testatum, by which purchaser releases mortgagor from all demands in respect of the mortgage. 8. AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, HE the said (*purchaser*) DOTH by these presents, release, exonerate and for ever discharge the said (*mortgagor*), his heirs, executors, and administrators, of and from the said three several debts or sums of 1,000*l.*, 75*l.* and 55*l.*, so due and owing from him the said (*mortgagor*) to the said (*purchaser*), upon or by virtue of the said recited mortgage security; AND ALSO of and from all covenants and agreements in the said mortgage deed contained, which by the said (*mortgagor*), his

heirs, executors, administrators or assigns, are to be observed and performed, and all claims and demands whatsoever, both at law and in equity, or otherwise howsoever, in respect of the said mortgaged premises, or in relation thereto. [INSERT HERE *qualified* covenants for title from the mortgagor; that he has good right to convey; for quiet enjoyment, freedom from incumbrances, and for further assurance, *ut ante*, No. I., clauses 8, 9, 10, pp. 48-51.

No. XVIII.

Conveyance in
Fee from
Mortgagor to
a Purchaser of
the Mortgage
Debt of a
Mortgagee, &c.

IN WITNESS, &c.

No. XIX.

CONVEYANCE BY MORTGAGOR AND MORTGAGEE TO A
PURCHASER UNDER A POWER OF SALE, THE MORTGAGOR
CONCURRING THEREIN. (a)

1. Parties.
2. Recital of mortgage.
3. That principal is still due, but that all interest has been paid.
4. Of contract to sell.
5. Testatum.
6. Habendum to dower uses.
7. Covenant from mortgagee that he has done no act to incumber.

8. Covenant from mortgagor that he has good right to convey, &c.

Substituted Clauses.

- A. Recital of mortgage by demise.
- B. That mortgagee, in exercise of his power of sale, has contracted to sell mortgaged premises.
- C. Form of surrender of term by a separate testatum.

Parties.

1. THIS INDENTURE, made the day of A.D., 18 ,
BETWEEN (*mortgagee*), of, &c., of the first part, (*b*) (*mortgagor*), of

Practical
remarks on the
stamp duty.

(a) The *ad valorem* duty will attach on the whole amount of purchase money, including as well the money secured by the mortgage, as that paid to the vendor, the Stamp Act (55 Geo. 3, c. 184), expressly declaring that where any lands or other property shall be sold and conveyed in consideration wholly, or in part of any such sum of money charged thereon by way of mortgage, wadset, or otherwise, and then due and owing to the purchaser, or shall be sold and conveyed, subject to any mortgage, wadset, bond, or other debt, or to any gross or entire sum of money to be afterwards paid by the purchaser, such sum of money, or debt shall be deemed the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect of which the said *ad valorem* duty is to be paid.

Mortgagees, or
their repre-
sentatives, are
necessary
parties to all
conveyances of
mortgaged
property.

(b) In all conveyances of mortgaged freehold estates, it will be necessary to make the mortgagee a concurring party, for the purpose of conveying the legal estate, although the mortgage may have long since been paid off, and the mortgagor never out of possession of the mortgaged premises. In case of the mortgagee's death, without having made any devise of his mortgaged estates, it will be necessary to make both his heir and personal representatives concurring parties—the former for the purpose of passing the legal estate—the latter to release the property from all claims in respect of the mortgage debt. This right, on discharge of the mortgage, will affect all persons taking any estates or interests, legal or equitable, in the mortgaged premises, all of whom may be compelled to

&c., of the second part, (*purchaser*), of, &c., of the third part, and (*purchaser's dower trustee*), of, &c., of the fourth part.

No. XIX.

*Conveyance by
Mortgagor and
Mortgagee to
a Purchaser in
Fee, with usual
Covenants from
Mortgagor.*

concur in a conveyance or reconveyance of the mortgaged property, without reference to their taking any beneficial interest under the mortgage, or obtaining any advantage by joining in such assurance; so that an heir taking no beneficial interest under the mortgage, or even under the mortgagee, and who may have been disinherited of everything except this dry unprofitable legal estate, will be as much compelled to convey, as if his ancestors had permitted him to inherit the whole of his property.

In case, however, the mortgaged estates are devised, the devisee, and not the heir, will be the proper party. Here, however, a question often arises, as to whether or not the will contains sufficient expressions to pass estates of this description; but after some considerable fluctuation of opinion (*Sir Thomas Littleton's case*; 2 Ventr. 351; *Pickern v. Vowles*, 1 Bro. C. C. 197; Ventr. 351; *Braybroke v. Inskip*, 8 Ves. 435; *Ex parte Brettell*, 6 Ves. 577; *Attorney-General v. Buller*, 5 Ves. 340; *Ex parte Sergison*, 8 Ves. 147), it appears to be now settled that trust or mortgage estates will pass under a general devise of real estate, unless it can be collected, from other expressions in the will, or purposes, or objects of the testator, that he did not mean that they should pass: (*Braybroke v. Inskip*, *sup.*, 1 Hughes Pract. Mortgages 23.) Nor will the circumstances of there being other property to which the devise is applicable afford a ground of exclusion: (*Sir T. Littleton's case*, *sup.*) Nor, it seems, will the introduction into the devise of words of severance, or other expressions showing that the devisees were to take several, and not joint estates, prevent such devise from comprehending trust and mortgaged estates, though the more usual, as well as convenient, practice in devising property of this nature, is to make the devisees joint tenants, in order that the entirety may go over to the survivors: (*Ex parte Whiteacre*, 1 Sand. Uses and Trusts, 285; 2 Jarm. on Wills, 644.) Neither will the circumstance of the testator having limited a power of appointment to the devisee afford any ground for excluding the mortgage estates: (*Ex parte Shaw*, 3 Sim. 159.)

Trust or mortgage estates will pass under a general devise of real estates.

But if, on the other hand, the property included in the general devise is subject to such charges as no testator could be supposed to impose upon property not strictly his own; as, where he subjects it to the payment of debts or legacies, or any other kind of charge, then the mortgage or trust estates will not pass: (*Wynne v. Littleton*, 2 Ch. Rep. 51; S. C. 1 Vern. 3; *Ex parte Scarfe*, 1 Atk. 605; *Duke of Leeds v. Munday*, 3 Ves. 348; *Roe d. Reade v. Reade*, 8 T. R. 118; *Ex parte Morgan*, 10 Ves. 101; *Attorney-General v. Vigor*, 8 Ves. 273; *Thompson v. Grant*, 4 Mad. 438; *Sylvester v. Jarman*, 10 Pri. 78; *Ex parte Whiteacre*, 1 Sand. Uses, 285; Hughes Pract. Mortgages, 24; *In the matter of Horsefall*, 1 McClel. & Y. 292.)

Whether the legal estate in mortgages will pass under the terms "mortgages" or "securities for money" has been the subject of much controversy, nor can the point as yet be considered as satisfactorily determined. In *Rencoise v. Cooper* (6 Mad. 371), Sir John Leach, V.-C., held that a mortgage in fee passed under a residuary devise of bonds, mortgages and other securities for money. But in *Sylvester v. Jarman* (10 Pri. 76), where a mortgagee devised to J. B., and his heirs, all the rest and residue of his freehold, leasehold and copyhold estates, which he might be seised of at the time of his decease, either in possession or reversion, together with all his goods and chattels, moneys, bonds mortgages and debts which might be owing to him at the time of his decease, subject to the payment of his debts, legacies, annuities and funeral expenses, and appointed J. B. executor of his will: it was held, that by the devise in question, the legal estate in the mortgaged premises did not pass to J. B., but descended to the heir-at-law of the testator; for, though the words of devise were large enough to comprise the property in question, the charge of the debts, legacies, annuities and funeral expenses, by introducing a qualification incompatible with such

When trust or mortgage estates will not pass under a general devise.

Whether the legal estate in mortgages will pass under the terms "mortgage" or "securities for money."

No. XIX.

2. WHEREAS by indenture of release dated the day of ,
in the year 1847 (expressed to be made in pursuance of the act

Conveyance by
Mortgagor and
Mortgagee to
a Purchaser in
Fee, with usual
Covenants from
Mortgagor.

Recital of
mortgage.

property, prevented its operation thereon. In the case of *Galliers v. Moss* (9 B. & C. 276), also, it was held that the words "*securities for money*," to certain trustees, their *executors, administrators and assigns*, did not operate on the inheritance in lands vested in the testator as mortgagee. But in *Ex parte Barber* (5 Sim. 451), where a testator, a mortgagee in fee (after certain specific bequests), bequeathed all his freehold hereditaments, and all his ready money, *securities for money*, and all other the residue of his personal estate, to trustees their heirs, executors, administrators and assigns, upon trust to sell, collect, get in and convert into money his personal estate, and to stand possessed of the moneys arising therefrom, upon the trusts therein mentioned; Sir L. Shadwell, V.-C., held, that the legal estate in the mortgaged lands passed under the words "*securities for moneys*." He thought that a plain intention was manifested by the language of the will, that complete dominion, for the purpose of converting the whole estate into money, should be give to the trustees. His Honour intimated that the combination of the two gifts of the real and personal estate, and the introduction of the word "*heirs*," distinguished this case from *Galliers v. Moss*.

Mather v.
Thomas.

And in *Mather v. Thomas* (6 Sim. 115), where a testator, after several devises and bequests, gave, devised and bequeathed all his messuages, chattels real, ready money, *securities for money*, debts and personal estate to A. and B., their heirs executors, administrators and assigns, upon certain trusts, it was held that the legal estate in the premises mortgaged to the testator in fee, passed to A. and B., the trusts declared not being repugnant to that construction. Sir L. Shadwell, however, although he intimated his opinion to be that the legal estate in the mortgaged premises passed by the words "*securities for money*," said he could not, with propriety, decide the case in the face of the decision of the Court of King's Bench, in *Galliers v. Moss*; and, therefore, the proper course would be to send a case for the opinion of another court of law. A case was accordingly sent to the Court of Common Pleas, who certified that the mortgaged estates passed under the term "*securities for money*."

As to the bene-
ficial interest in
the mortgage.

With respect to the beneficial interest in the mortgage, the cases are not altogether satisfactory; nor do text writers appear to be much better agreed upon the subject; one respectable text writer lays it down that a general devise will include the beneficial interest in the mortgage: (1 Rob. on Wills, 403, 3rd edit. referring to *Ex parte Sergison*, 4 Ves. 147.) Another says that with respect to the *beneficial interest in the mortgage*, a general devise of lands will not commonly have the effect of including it: (2 Jarm. on Wills, 633, refers to *Strode v. Russell*, 2 Vern. 621; S. C. 3 Cha. Rep. 169; 2 Ventr. 851; 3 P. Wms. 61.) The latter writer also continues to observe that the case *Ex parte Sergison* (4 Ves. 147), referred to as the authority for the former proposition, does not support it; the devisee in that case being both executor and residuary *legatee*, and, consequently entitled, *in that character*, to the beneficial interest in the mortgage; and that, besides, the only question in the case related to the legal estate in the lands. The same learned writer also adds that the position is opposed by the established principle of equity, which considers the mortgagee as holding the lands in a fiduciary character only, and the estate as still substantially belonging to the mortgagor; and that the person taking the mortgaged lands therefore by devise or descent from the deceased mortgagee, it is obvious, is a trustee for the person entitled to the money or debt by virtue of the will or otherwise (*Attorney-General v. Meyrick*, 2 Ves. sen. 44), unless, of course, both these interests happen to unite in the same person: (2 Jarm. on Wills, 634.)

There appears to be great soundness in this reasoning; and in *Strode v. Russell* (2 Vern. 621), it was held, that the beneficial interest in mortgages in fee, although forfeited when the will was made, did not pass under a general devise

for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties), between the said (*mortgagor*) of the one part, and the said (*mortgagee*) of the other part, ^{IT IS WITNESSED}, that in consideration of 1,500*l.* paid by the said (*mortgagee*) to the said (*mortgagor*), the said (*mortgagor*) did thereby grant, release and confirm unto the said (*mortgagee*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*], TO HOLD the same, with their appurtenances, unto and to the use of the said (*mortgagee*), his heirs and assigns for ever; SUBJECT NEVERTHELESS to a proviso for redemption and reconveyance of the said premises, on payment by the said (*mortgagor*), his heirs, executors, administrators or assigns, unto the said (*mortgagee*), his executors, administrators or assigns, of the sum of 1,500*l.* and interest, on a certain day therein mentioned, and since past; AND ALSO subject to the power of sale, and the powers, provisoes, declarations and agreements in the now reciting indenture of mortgage expressed, declared and contained.(b)

No. XIX.

Conveyance by
Mortgagor and
Mortgagee to
a Purchaser in
Fee, with usual
Covenants from
Mortgagor.

of "all my lands, tenements and hereditaments." And in all the cases which have been cited in support of the doctrine that a general devise of lands will include the beneficial interest in a mortgage, the testator was mortgagee in possession at the time (*Clark v. Abbott*, 2 Eq. Abr. 606; S. C. Barnardist. 457; *Woodhouse v. Meredith*, 1 Mer. 540), which possession, when accompanied by acts of ownership, strongly favours the supposition that the testator, in expressly devising the property, meant to confer the beneficial interest. And, notwithstanding it seems to have been doubted (*Wilkinson v. Merryland*, Cro. Car. 447, 449), whether the benefit of a mortgage would pass by the word "mortgages," collocated with other chattels, it is now settled that they will so pass: (*Attorney-General v. Bowyer*, 3 Ves. 317; *Dicks v. Lambert*, 4 Ves. 730.)

And it also seems that if a testator were to devise lands by the specific description, which, in fact, the testator is only entitled to as a mortgagee, or was to devise all his lands in a particular place, and he had no other than mortgaged lands there, that then the beneficial interest would pass, unless the will contained some expressions indicative of a contrary intention: (see 1 Pow. Mort. edit. Cov. 409.)

When beneficial
interests in a
mortgage will
pass under a
specific disposi-
tion of the land.

(b) Variation where the mortgage was by demise:—

A. "WHEREAS by indenture dated the day of in the year 18 , made between the said (*mortgagor*) of the one part, and the said (*mortgagee*), of the other part, the said (*mortgagor*), in consideration of the sum of 1,500*l.* paid to him by the said (*mortgagee*), did thereby grant, bargain, sell and demise unto the said (*mortgagee*), ALL, &c. [HERE DESCRIBE *parcels*], TO HOLD the same, with the appurtenances, unto the said (*mortgagee*), his executors,

Recital of
mortgage by
demise.

No. XIX.

*Conveyance by
Mortgagor and
Mortgagee to
a Purchaser in
Fee, with usual
Covenants from
Mortgagor.*

3. AND WHEREAS the said principal sum of 1,500*l.* still remains due and owing from the said (*mortgagor*) to the said (*mortgagee*), upon the said hereinbefore recited mortgage security, but all interest for the same has been duly paid up to the day of the date of these presents, as the said (*mortgagee*) doth hereby acknowledge.

That principal
is still
due, but that
all interest has
been paid.
Of contract
to sell.

4. AND WHEREAS the said (*mortgagor*) has contracted to sell the said hereditaments and premises, and the fee-simple and inheritance thereof in possession, free from incumbrances, to the said (*purchaser*), for the sum of 2,500*l.*(*c*)

Testatum.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of 1,500*l.* sterling, paid by the said (*purchaser*) to the said (*mortgagee*) on the execution hereof (with the privity and approbation of the said (*mortgagor*), testified by his being a party hereto and concurring herein), the receipt of which, and that the same is in full satisfaction and discharge of all moneys due to him in respect of the said hereinbefore recited mortgage security, the said (*mortgagee*) hereby acknowledges, and therefrom doth release, exonerate

administrators and assigns, from thenceforth for the term of 1,000 years, without impeachment of waste ; subject to a proviso for making void the said term, upon payment by the said (*mortgagor*), his heirs, executors, administrators or assigns, unto the said (*mortgagee*), his executors, administrators or assigns, of the sum of 1,500*l.* and interest, on a certain day therein mentioned, and since past."

(*c*) If the sale is by the mortgagee in pursuance of his power of sale, substitute for the above clause—

That mortgagee,
in exercise of
his power of
sale, has con-
tracted to sell
the mortgaged
premises.

B. "AND WHEREAS the said (*mortgagee*), in pursuance of the power of sale limited to him by the said hereinbefore lastly recited indenture, has contracted to sell the said hereditaments and premises, and the fee-simple and inheritance thereof in possession, free from incumbrances, to the said (*purchaser*) for the sum of 2,500*l.*; and the said (*mortgagor*) has agreed to concur in the conveyance of the said premises, and to enter into the usual qualified covenants for title in manner hereinafter appearing."

and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, and also the said (*mortgagor*), his heirs, executors and administrators; AND ALSO in consideration of the sum of 1,000*l.* sterling, at the same time paid by the said (*purchaser*) to the said (*mortgagor*), the receipt of which said sum of 1,000*l.*, and payment of the said sum of 1,500*l.* in the manner aforesaid, making together the sum of 2,500*l.*, the purchase-money of the said hereditaments and premises, the said (*mortgagor*) hereby acknowledges, and therefrom doth release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*mortgagee*) [DOTH by these presents, grant, release and convey (*d*)], and the said (*mortgagor*) DOTH by these presents,

No. XIX.

*Conveyance by
Mortgagor and
Mortgagee to
a Purchaser in
Fee, with usual
Covenants from
Mortgagor.*

(*d*) If the mortgage was for a term, substitute for the words within brackets—

“(at the request and by the direction of the said (*mortgagor*) and (*purchaser*), testified by their being parties hereto, and for the purpose of merging the said term of 1,000 years in the said premises), DOTH by these presents, surrender, yield up, and assign.” *

* The practice formerly was to keep a term of this kind on foot, and to assign it to a trustee for the purchaser, upon trust to attend the inheritance, and as a protection against intermediate incumbrances. But as, since the statute 8 & 9 Vict. c. 112, all satisfied terms are made to cease, it would be useless to attempt to assign the term, which, although it might operate as a present demise, would afford no protection whatever against prior incumbrances. The best way, therefore, is to surrender the term, and have done with it altogether, as in the above clause. Observations on the effect produced by stat. 8 & 9 Vict. c. 112, upon satisfied terms.

The practice formerly seems to have been to surrender the term by a separate testatum, and this, in fact, should still be done where the conveyance is by appointment; but where the property is conveyed by grant and release, the practice at the present day generally is to incorporate it in the granting clause. Where a separate testatum is used, the following form will be found well adapted to the purpose :— Practical remarks.

C. “AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, HE the said (*mortgagee*) (at the request and by the direction of the said (*mortgagor*) and (*purchaser*), testified as aforesaid,) DOTH by these presents, surrender, yield up and assign unto the said (*purchaser*), his heirs and assigns, ALL and singular the aforesaid hereditaments and premises mentioned and described in the said hereinbefore recited indenture of mortgage, and all the estate, right, title and interest, both legal and Form of surrender of term when made by a separate testatum.

No. XIX. grant, release, ratify and confirm unto the said (*purchaser*) and his heirs, ALL those the aforesaid messuages and tenements, and all and singular other the hereditaments and premises mentioned and comprised in the said hereinbefore recited indenture of mortgage; AND all rights, members, and appurtenances to the said hereditaments and premises belonging or appertaining; AND all the estate, right, title and interest, both legal and equitable, of them the said (*mortgagor*) and (*mortgagee*) therein, TOGETHER with all deeds, evidences and writings relating to the title of the same hereditaments and premises, in the possession, custody or power of the said (*mortgagor*) and (*mortgagee*), or either of them, or which the said (*mortgagor*) can obtain without suit.

Conveyance by
Mortgagor and
Mortgagee to
a Purchaser in
Fee, with usual
Covenants from
Mortgagor.

Habendum to
dower uses.

6. TO HAVE AND TO HOLD the said (*short general description*) and all and singular other the hereditaments and premises hereinbefore described and hereby granted and released, with their, and every of their rights, members and appurtenances, unto the said (*purchaser*) and his heirs; [CONTINUE *limitation to uses*, AND INSERT *declaration to bar dower, ut ante*, No. I. clauses 6, 7, pp. 46, 48.]

Covenant from
mortgagee that
he has done no
act to incumber.

7. AND the said (*mortgagee*) doth hereby for himself, his heirs executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that he the said (*mortgagee*) hath not done [or permitted, or willingly or knowingly suffered, or been party or privy to] any act, [deed, matter or thing whatsoever] whereby, [or by reason or means whereof] the said hereditaments and premises [hereby granted and released, or any part of the same, are, is,] can, [shall or may] be [impeached, charged,] incumbered [or prejudicially affected in any manner howsoever.](e)

Covenant from
mortgagor that

8. AND the said (*mortgagor*) doth hereby for himself, his heirs,

equitable, of him the said (*mortgagee*) therein, TO THE INTENT that the residue of the said term of 1,000 years may be merged and extinguished in the freehold reversion and inheritance of the said hereditaments and premises hereby granted and released."

(e) If brevity is desirable, all the words within brackets above may be safely omitted.

executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act, deed, matter or thing whatsoever, done or permitted by the said (*mortgagor*) to the contrary,) they the said (*mortgagor*) and (*mortgagee*), or one of them, now have or hath in themselves or himself good right, full power, and lawful and absolute authority to convey the said hereditaments and premises hereby granted and released, to the uses and in manner aforesaid, according to the true intent and meaning of these presents.^(f) [ADD covenants for quiet enjoyment, freedom from incumbrances, and for further assurance, ut ante, No. I., clauses 9, 10, pp. 49, 50.]

No. XIX.

Conveyance by
Mortgagor and
Mortgagee to
a Purchaser in
Fee, with usual
Covenants from
Mortgagor.

he has good
right to convey

^(f) It is for the mortgagee's advantage to enter into the usual qualified Practical covenants for title, as by that means he gets rid of the absolute covenants observations contained in the mortgage deed.

No. XX.

CONVEYANCE IN FEE BY MORTGAGEE WITHOUT THE
MORTGAGOR'S CONCURRENCE. (a)

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of mortgage, and of power of sale. 3. Recital of contract to sell, in pursuance of power of sale. | <ol style="list-style-type: none"> 4. Testatum. 5. Habendum, to purchaser in fee, discharged from mortgage debt, and of equity of redemption. |
|--|---|

Parties.

1. THIS INDENTURE, made the day of A.D., 18 ,
BETWEEN (*mortgagee*), of, &c., of the one part, and (*purchaser*),
of, &c., of the other part.

Recital of
mortgage, and
of power of sale

2. WHEREAS by indenture of release (in pursuance of the act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties,) made between (*mortgagor*) of the one part, and the said (*mortgagee*) of the other part, the hereditaments and premises hereinafter described, and which are intended to be hereby granted and released, were conveyed and assured unto and to the use of the said (*mortgagee*), his heirs and assigns for ever, subject to a proviso or condition for

Purchaser under
a power of sale
has no right to
compel the
mortgagor to
concur in the
conveyance.

(a) It was at one time doubted whether a mortgagee could effect a sale so as to be binding on the equity of redemption, unless the mortgagor concurred in the conveyance to the purchaser: (1 Pow. Mort. 14; Coote Mort. 129.) But these doubts have been long since removed, and the validity of powers of this kind are now so firmly established, that a purchaser under a power of sale contained in a mortgage, cannot insist upon the mortgagor's being made a party to the conveyance; and this notwithstanding the mortgage deed should contain an express covenant on his part to concur in any sale which the mortgagee might make of the premises (*Clay v. Sharpe*, 18 Ves. 346; *Corder v. Morgan*, *ib.* 344; and see 1 Hughes Pract. Mort. 67); and, it seems, that if a purchaser should refuse a specific performance, on the ground of the mortgagor's not being a party to the sale, it would be decreed against him with costs: (see Coote Mort. 503.)

redemption and reconveyance, on payment by the said (*mortgagor*), his heirs, executors, administrators or assigns, unto the said (*mortgagee*), his executors, administrators or assigns, of the sum of 2,550*l.* and interest, at the rate of 4*l.* per centum per annum, at the time and in manner therein mentioned, but in payment whereof default was made. AND it is by the said hereinbefore recited indenture declared, that in case default should be made in payment of the said principal sum of 2,550*l.* and interest thereby secured, or any part of the same, it should be lawful for the said (*mortgagee*), at any time thereafter, either with or without the concurrence of the said (*mortgagor*), his heirs or assigns, to sell the said hereditaments and premises by public auction or by private contract, and that the receipt of the said (*mortgagee*), his heirs, executors, administrators or assigns, should be a sufficient indemnity to any purchaser or purchasers of the said premises, and exonerate him or them respectively from all responsibility in respect of the application of the purchase moneys; and also that such purchaser or purchasers should not be obliged to inquire whether any such sale or sales was or were necessary for the purpose of the said mortgage, nor whether any default had been made in payment as aforesaid.

No. XX.

Conveyance by
Mortgagee
without the
Mortgagor's
concurrence.

Recital of power
of sale.

3. AND WHEREAS the said (*mortgagee*), in exercise of the said hereinbefore recited power of sale, hath contracted to sell the said hereditaments and premises to the said (*purchaser*), and the fee-simple and inheritance thereof, free from incumbrances, for the sum of 3,500*l.*

Recital of
contract to sell,
in pursuance of
the power of
sale.

4. NOW THIS INDENTURE WITNESSETH, that in order to complete the said sale, and in consideration of the sum of 3,500*l.* sterling paid by the said (*purchaser*) to the said (*mortgagee*) on the execution hereof, the receipt of which the said (*mortgagee*) hereby acknowledges, and therefrom doth release and discharge the said (*purchaser*), his heirs, executors, administrators and assigns for ever, HE the said (*mortgagee*) DOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*; INSERT *general words*, and *all-estate clause*, and *all deeds clause*, *ut ante*, No. I., clause 5, pp. 45, 46.]

Testatum.

No. XX.

Conveyance by
Mortgagee
without the
Mortgagor's
concurrence.

Habendum to
purchaser in
fee discharged
from mortgage
debt and equity
of redemption.

5. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereinbefore described, and hereby granted and released, with the appurtenances, unto the said (*purchaser*) and his heirs.(b) [TO THE USE of the said (*purchaser*), his heirs and assigns for ever], discharged from the said sum of 2,550*l.*, and all interest for the same, and all equity and right of redemption, and all claims and demands whatsoever, under or by virtue of the said hereinbefore recited indenture of release. [INSERT *covenant from mortgagee that he has done no act to incumber, as in last precedent, clause 7, p. 118.*]

Practical
observations.

(b) If the property is designed to be limited to uses to bar dower, omit the words within the brackets above, and at the end of the above clause add limitation to uses, and declaration to bar dower, *ut ante*, No. I., clauses 6, 7, pp. 46, 48.

No. XXI.

CONVEYANCE BY THE HEIR AND EXECUTOR OF A DECEASED MORTGAGEE, AND THE OWNER OF THE EQUITY OF REDEMPTION, TO A PURCHASER IN FEE.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of mortgage deed. 3. Of death of mortgagee, and of his will appointing executors, but making no disposition of estates vested in him as mortgagee. 4. Of probate of mortgagee's will. 5. Of contract to sell. | <ol style="list-style-type: none"> 6. That principal still remains due, but that all interest has been duly paid. 7. Testatum by which heir, executors, and owner convey. 8. Covenant from heir and executors that they have done no act to incumber. |
|--|--|
-

1. THIS INDENTURE, made the day of A.D., 18 , Parties.
 BETWEEN (*heir of deceased mortgagee*), of, &c., of the first part,
 (*owner of equity of redemption*), of, &c., of the second part,
 (*executors of deceased mortgagee*), of, &c., of the third part,
 (*purchaser*), of, &c., of the fourth part, and (*dower trustee*), of, &c.,
 of the fifth part.

2. WHEREAS by indenture dated the 12th day of June, in the year 1847, expressed to be made in pursuance of the act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties, between the said (*owner*) and (*Christian name*), his wife, of the one part, and the said (*deceased mortgagee*), of the other part, (and which was duly acknowledged by the said (*Christian name*), the wife of the said (*owner*), in pursuance of the act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance), the hereditaments and premises hereinafter described, and which are intended to be hereby granted and released, were

Recital of
mortgage deed.

No. XXI. *Conveyance by the Heir and Executor of a deceased Mortgagee, and the Owner of the Equity of Redemption, to a Purchaser in Fee.*

conveyed and assured unto and to the use of the said (*deceased mortgagee*), his heirs and assigns for ever; subject to a proviso for redemption and reconveyance, on payment by the said (*owner*), his heirs, executors, administrators or assigns, unto the said (*deceased mortgagee*), his executors, administrators or assigns, of the sum of 2,000*l.*, and interest at the rate of 4*l.* for every 100*l.* by the year, at the time and in manner therein mentioned, but in payment whereof default was made.

Of death of mortgagee, and of his will appointing executors, but making no disposition of estates vested in him as mortgagee.

3. AND WHEREAS the said (*deceased mortgagee*) died on or about the 27th day of December last, having duly made and published his last will and testament in writing, dated the 5th day of July, in the year 1847, legally executed and attested as by law is required; and appointed the said (*executors*), joint executors in trust thereof; but the said testator made no testamentary disposition whatever of such estates as were vested in him in trust or by way of mortgage, leaving the said (*heir*), his eldest son and heir-at-law him surviving.(a)

Of probate of mortgagee's will.

4. AND WHEREAS the said hereinbefore recited will was duly proved by the said (*executors*) in the Prerogative Court of the Archbishop of Canterbury, on the 25th day of February last.

Of contract to sell.

5. AND WHEREAS the said (*owner*) has contracted to sell the said hereditaments and premises in fee-simple in possession, free from all incumbrances, to the said (*purchaser*), for the sum of 5,000*l.*

That principal is still due, but that all interest has been duly paid.

6. AND WHEREAS the sum of 2,000*l.* still remains charged upon the said premises, and owing upon the said hereinbefore recited mortgage security, but all interest for the same has been paid up to the day of the date of these presents, as the said (*executors*) do hereby acknowledge.

Testatum, by which heir, executors, and owner convey.

7. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 2,000*l.*

(a) See practical observations as to the devise of mortgage estates, *ante*, p. 112, note (b).

sterling, this day paid by the said (*purchaser*) to the said (*executors*) by the direction of the said (*owner*), testified by his being a party hereto, the receipt of which the said (*executors*) hereby acknowledge, and also that the same is in full satisfaction of all moneys owing to them upon the said hereinbefore recited mortgage, and therefrom do release, exonerate and for ever discharge the said (*owner*) and also the said (*purchaser*) respectively, and their respective heirs, executors, administrators and assigns; ALSO in consideration of the sum of 3,000*l.* sterling, the residue of the said purchase money at the same time paid by the said (*purchaser*) to the said (*owner*), the receipt and payment in manner aforesaid of which said two several sums of 2,000*l.* and 3,000*l.*, making together the sum of 5,000*l.*, the purchase money of the said hereditaments and premises, the said (*owner*) hereby acknowledges and therefrom doth release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; and also in consideration of the sum of 5*s.* at the same time paid by the said (*purchaser*) to the said (*heir*), the receipt of which is hereby acknowledged, the said (*heir*), (in respect of his legal estate as heir-at-law of the said (*mortgagee*), deceased, as aforesaid, and by the direction of the said (*owner*), testified as hereinbefore mentioned), DOTH by these presents grant, release and convey, the said (*executors*), (as such executors as aforesaid), DO by these presents remise, release and quit claim, and the said (*owner*) DOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*, INSERT *general words*, *all-estate clause*, and *all-deeds clause*, *habendum to uses*, and *declaration to bar dower*, *ut ante*, No. I., clauses 5, 6, 7, pp. 45 to 48.]

No. XXI.

Conveyance by
the Heir and
Executor of a
deceased
Mortgagee, and
the Owner
of the Equity of
Redemption,
to a Purchaser
in Fee.

8. AND each of them the said (*heir*) and (*executors*) do hereby for themselves respectively, and for their respective heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that they the said (*heir*) and (*executors*) respectively have not, nor with their privy hath the said (*deceased mortgagor*) done or permitted any act, whereby the said hereditaments and premises, or any part of the same can be incumbered. [ADD *usual qualified covenants for title from owner*, *ut ante*, No. I., clauses 8, 9, 10, pp. 48 to 51.]

Covenant from
heir and
executors that
they have done
no act to
incumber.

IN WITNESS, &c.

No. XXII.

CONVEYANCE BY AN INFANT HEIR, AND THE ADMINISTRATOR OF A DECEASED MORTGAGEE, AND THE OWNER OF THE EQUITY OF REDEMPTION, TO A PURCHASER IN FEE. (a)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of mortgagee's death, intestate leaving an infant heir. 3. That letters of administration have been granted to administrator. 4. Recital of the petition to the Court of Chancery, and order of the court vesting the estate of the infant in the trustee. | <ol style="list-style-type: none"> 5. Of amount of mortgage money and interest now due. 6. Testatum, by which, in obedience to the order of the court, and with the consent of the administrator, the trustee for the infant heir conveys. 7. Habendum to the purchaser in fee. |
|--|--|

Parties.

1. THIS INDENTURE, made the day of A.D., 18 ,
BETWEEN (*trustee for infant heir*) of, &c., of the first part, (*owner*

Practical
remarks.

Infant heirs of
trustees and
mortgagees
empowered to
convey.

(a) Considerable difficulty used formerly to arise where a mortgagee or trustee died leaving an infant or lunatic heir, or the heir could not be found, or there was no heir left, or it was not known who the heir really was.

To obviate these difficulties several enactments have from time to time been passed, by which infant trustees and mortgagees are empowered to convey under the direction of the Court of Chancery; and where trustees or mortgagees of lands are lunatics, the Lord Chancellor may direct the committee of such persons to convey (6 Geo. 4, c. 74; 11 Geo. 4 & 1 Will. 4, c. 60, ss. 3 to 6); and where trustees of freehold or leasehold estates are out of the jurisdiction, or are not amenable to any process of the Court of Chancery, or it shall be uncertain whether the trustee last known to be seised as aforesaid shall be living or dead, or, if known to be dead, it shall not be known who is his heir; or if any trustee seised as aforesaid, or the heir of any such trustee seised as aforesaid, shall refuse to convey such land for the space of twenty-eight days next after a proper deed for making such conveyance shall have been tendered for his execution by an agent duly authorized by any person entitled to require the same, then, and in every such case it shall be lawful for the said Court of Chancery to direct any person whom the court may think proper for that purpose, in the place of such trustee or heir, to convey to such persons and in such manner as the said court shall think proper; and every such conveyance shall be as effectual as if the trustee seised as aforesaid, or his heir, had made and executed the same.

Under this act the Court of Chancery is empowered to direct the surrender of

of the equity of redemption) of, &c., of the second part, (administrator of deceased mortgagee) of, &c., of the third part, and (purchaser) of, &c., of the fourth part. [RECITE deed creating the mortgage, as in last precedent, clause 2, p. 123.]

No. XXII.

Conveyance by
Infant Heir, and
Administrator
of deceased
Mortgagee, and
Owner of Equity
of Redemption,
to Purchaser in
Fee.

copyholds by a person appointed by the court to accept the same (*Reg. v. Pitt*, 3 Jur. 10, 28); but the above-mentioned act, 11 Geo. 4 & 1 Will. 4, c. 60, does not apply to the case of its being unknown whether or not the trustee has left an heir: (*Ex parte Stanley*, 5 Sim. 320; *Re Goddard*, 3 Myl. & Kee. 25; *Ex parte Payne*, 6 Sim. 645; *Re Deardon*, 3 Myl. & Kee. 25; *Pendergast v. Eyre*, Ca. temp. Sug. 131.) This omission has, however, been supplied by a subsequent enactment, 1 & 2 Vict. c. 69, which, after reciting that doubts had arisen upon the construction of the statutes above referred to, enacts "that where any person seised of any lands by way of mortgage, shall have departed this life without having been in possession of such lands, or in receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid or shall be paid to his executor or administrator, and the devisee or heir, or other real representative, or any of the devisees or heirs, or real representatives of such mortgagee, shall be out of the jurisdiction or not amenable to the process of the Court of Chancery; or it shall be uncertain, where there are several devisees or representatives, who were joint tenants, which of them was the survivor; or it shall be uncertain whether any such devisee, or heir, or representative, be living or dead, or if known to be dead, it shall not be known who was his heir; or where such mortgagee, or any such devisee, or heir, or representative shall have died without an heir; or if any devisee or heir shall neglect or refuse to convey such land for the space of twenty-eight days after a proper deed for making such conveyance shall have been tendered for his execution, or by an agent lawfully authorized by any person entitled to require the same, then and in every such case it shall be lawful for the said Court of Chancery to direct any person whom such court may think proper to appoint for that purpose, in the place of such devisee, heir or representative (whether such devisee, heir or representative shall or shall not have a beneficial interest in the money paid by the executor or administrator as aforesaid), to convey such land in such like manner as by the said first recited act the said court is empowered, to appoint a trustee to convey in the cases therein mentioned, in the place of a trustee, or the heir of a trustee; and every such conveyance shall be as effectual as if such devisee, or heir, or representative, had executed the same."

Court of
Chancery
empowered to
direct the
surrender of
copyholds.

Stat. 1 & 2 Vict.
c. 69.

It was not intended by the last-mentioned act to repeal the two former acts, and, therefore, those acts are to be construed as they were before; the subsequent enactment being intended to apply to those cases only which are expressly provided for. In a case therefore in which it was uncertain whether the person who was the mortgagee had left an heir, Lord Langdale, M. R., thought that though it was not within the statute 11 Geo. 4 & 1 Will. 4, c. 60, and his lordship made the order accordingly: (*Re Wilson's Estate* and *Re Gathorne*, 8 Sim. 392.) But, in a subsequent case (*Green v. Holden*, 1 Beav. 207), Lord Langdale held that the case of a mortgagee himself being out of the jurisdiction, was not within the 11 Geo. 4 & 1 Will. 4, c. 60.

Stat. 1 & 2 Vict.
c. 69, does not
repeal former
enactments.

The direction of the Lord Chancellor or of the Court of Chancery is to be made upon petition; and where, on account of the length of time which shall have elapsed since the creation of the last declaration of trust, the title of a person claiming a conveyance or transfer may appear to require deliberate investigation in the presence of all parties interested, in order to prevent the vesting of the legal estate in a person who may not really be entitled to the benefit thereof; or if it should otherwise appear not proper to make an order upon petition, the Lord Chancellor or Court of Chancery is empowered (although this does not deprive the court of the power to make the usual order in a sum-

Direction of the
Lord Chancellor
to be made upon
petition.

No. XXII.

Conveyance by
Infant Heir, and
Administrator
of deceased
Mortgagee, and
Owner of Equity
of Redemption,
to Purchaser in
Fee.

Recital of mort-
gagee's death
intestate,
leaving an
infant heir.

That letters of
administration
have been
granted to
administrator.

Recital of
petition to the
Court of
Chancery, and
order of the
court vesting
the infant's
estate in the
trustees.

2. AND WHEREAS the said (*deceased mortgagee*) died on or about the day of , in the year 18 intestate, leaving the said (*infant heir*), his eldest son and heir-at-law, but now an infant under the age of twenty-one years (that is to say), of the age of twelve years or thereabouts, him surviving.

3. AND WHEREAS letters of administration of the estate and effects of the said (*deceased mortgagee*) were granted to the said (*administrator*), by the Prerogative Court of the Archbishop of Canterbury, on the day of last. [INSERT HERE *recital of contract to sell, as in last precedent, clause 5, p. 124.*]

4. AND WHEREAS, in order that the legal estate of the said (*deceased mortgagee*) in the said hereditaments and premises, which by his death intestate had become vested in his son the said (*infant*), might be conveyed to the said (*purchaser*), a petition was presented on or about the day of to the Lord High Chancellor of Great Britain by the said (*administrators*), and the (*owner of the equity of redemption*), upon the hearing of which petition, on the day of following, it was ordered that the said hereditaments and premises should vest in the said (*trustee for infant*) for the estate of the said infant therein.

mary way) *Re Clifford's estate*, 2 Myl. & Kee. 624; *Ex parte Door*, 5 Sim. 530); to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer, and upon the establishment by a decree of such right, by the same decree or an order in the cause, or in lunacy, or both, to direct a conveyance or transfer. And where the court by a decree declares that an infant heir is a trustee, and that the right of the party is established to the conveyance, no further petition will be necessary, and the court may go on to direct a conveyance under such decree: (*Broom v. Broom*, 3 Myl. & Kee. 443; *Walton v. Merry*, 6 Sim. 328; *Miller v. Knight*, 1 Kee. 129.)

By a still later act than those above considered (7 & 8 Vict. c. 76), an executor or administrator of a mortgagee entitled to the mortgage money, was authorized, upon redemption, to convey the legal estate in the land, where possession had not been taken by virtue of the mortgage, and no action or suit was pending: (sect. 9.) But this enactment was repealed by an act that was passed in the following session: (stat. 8 & 9 Vict. c. 106.) (See 1 Hughes Pract. Sales, 215.)

But now by the recent enactment, 13 & 14 Vict. c. 60, s. 7, where any infant shall be seised or possessed of any lands upon any trust, or by way of mortgage, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons, and for such estate as the said court shall direct; and the order shall have the same effect as if the infant had been twenty-one years of age, and had duly executed a conveyance or assignment of the same lands in the same manner for the same estate, and for the purpose of carrying out the objects of the last-mentioned statute the above precedent has been framed.

Personal
representatives
of mortgagees
empowered to
reconvey by
stat. 7 & 8 Vict.
c. 76 (since
repealed.)
Court of
Chancery may
convey estate of
a trustee out of
the jurisdiction
of the court.

5. AND WHEREAS upon an account this day made up and stated between the said (*owner*) and the said (*administrator*), there appears to be now due and owing for principal and interest upon the said mortgage security, the sum of 2,558*l.* 16*s.*

No. XXII.

Conveyance by
Infant Heir, and
Administrator
of deceased
Mortgagee, and
Owner of Equity
of Redemption,
to Purchaser in
Fee.

6. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and also in consideration of the sum of 2,558*l.* 16*s.*

sterling, paid by the said (*purchaser*) to the said (*administrator*), (at the request and by the direction of the said (*owner*), testified by his being a party hereto and concurring herein), the receipt of which, and that the same is in full satisfaction and discharge of all principal moneys and interest due and owing upon or by virtue of the said recited mortgage security, the said (*administrator*) doth hereby acknowledge, and of and from the same and every part thereof doth acquit, release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, and also the said (*owner*), his heirs, executors and administrators; and also in consideration of the sum of 2,991*l.* 4*s.* sterling, at the same time paid by the said (*purchaser*) to the said (*owner*), the receipt and payment in manner aforesaid of which said two several sums of 2,558*l.* 16*s.* and 2991*l.* 4*s.*, making together the sum of 5,550*l.*, the purchase money of the said hereditaments and premises, the said (*owner*) doth hereby acknowledge, and of and from the same and every part thereof doth acquit, release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; HE the said (*trustee for infant heir*), with the consent and by the assent of the said (*administrator*) (testified by his being a party hereto), DOTH by these presents grant, release and convey, the said (*administrator*) (as such administrator as aforesaid), DOTH by these presents remise, release and quit claim, and the said (*owner*) DOTH by these presents grant, release, ratify and confirm unto the said (*purchaser*), and his heirs, [HERE DESCRIBE *parcels*; insert general words; all-estate clause; and all-deeds clause, ut ante, No. I., clause 5, p. 44.]

Of amount of
mortgage money
and interest now
due.

Testatum, by
which, in
obedience to the
order of the
court, and with
the consent of
the adminis-
trator, the
trustee for the
infant heir
conveys.

7. TO HAVE AND TO HOLD the said (*short general description*) and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*), and his heirs; TO THE USE of the said (*pur-*

Habendum to
purchaser in fee.

No. XXII. *chaser*), his heirs and assigns for ever. (b) [INSERT *covenant from infant heir and administrator that they have done no act to incumber, as in last precedent*, clause 8, p. 125; ALSO *usual covenants for title owner, ut ante*, No. I., clauses 8, 9, 10, pp. 48 to 51.]

— —
*Conveyance by
 Infant Heir, and
 Administrator
 of deceased
 Mortgagee, and
 Owner of Equity
 of Redemption,
 to Purchaser in
 Fee.*

IN WITNESS, &c.

(b) If the premises are to be limited to dower uses, substitute the form, *ut ante*, No. I., clause 6, pp. 46, 48, and add clause to debar widow of dower, *ut ib.* clause 7, p. 48.

No. XXIII.

CONVEYANCE TO A PURCHASER IN FEE TO USES TO BAR
DOWER BY A TENANT FOR LIFE AND REMAINDER MAN,
PART OF THE CONSIDERATION BEING A RENT-CHARGE
LIMITED TO THE TENANT FOR LIFE. (a)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of disentailing deed. 3. Of contract to sell. 4. Testatum. 5. Habendum to purchaser's trustees. 6. To the use and for the intent that tenant for life shall receive a yearly rent-charge of 150<i>l.</i> for life. 7. Power of distress. 8. Power of entry. | <ol style="list-style-type: none"> 9. Limitation to trustee for tenant for life for ninety-nine years, if tenant for life shall so long live. 10. Limitation to dower uses. 11. Declaration of trust of term to secure annuity. 12. Receipt of trustee to be a sufficient discharge. 13. Covenant from purchaser to pay rent-charge. 14. Covenant from tenant for life and remainder man that they have good right to convey. |
|---|---|

1. THIS INDENTURE, made the day of A.D., 18 , Parties.
BETWEEN (*tenant for life*), of, &c., of the first part (*remainder-*
man in fee), of, &c., of the second part, (*purchaser*), of, &c., of the

(a) An annuity granted in consideration of the conveyance of an estate, Practical was not formerly viewed in the light of a sale for money, and consequently observations. did not require an *ad valorem* stamp: (*James v. James*, 2 Brod. & Bing. 702; *Tetley v. Tetley*, 4 Bing. 214.) But now, by statute 16 & 17 Vict. c. 63, a conveyance of any kind (not being a lease or tack), in consideration of an annual sum payable in perpetuity or for any indefinite period, whether fee-farm, or other rent, feu duty, ground rent, or otherwise, where the annual sum thereby secured shall not exceed 20*s.*, is charged with a duty of 2*s.* 6*d.*; and where it exceeds 20*s.*, and does not exceed 12*l.*, then for every 20*s.* or fractional part of 20*s.* of such annual sum, 2*s.* 6*d.*; and where the sum shall exceed 12*l.*, and shall not exceed 24*l.*, then for every 40*s.*, or fractional part of 40*s.* of such annual sum, a duty of 5*s.*; and where the same shall exceed 24*l.*, then for every 4*l.*, and for every fractional part of 4*l.* of such annual sum, a duty of 10*s.* And by a still more recent enactment, 17 Vict. c. 83, where deeds are made for several valuable considerations, an *ad valorem* duty is chargeable in respect of each: (sect. 16.)

No. XXIII. third part, (*purchaser's trustee*), of, &c., of the fourth part, and
 (trustee for tenant for life), of the fifth part.

Conveyance to a
 Purchaser in
 Fee to uses to
 bar dower by a
 Tenant for Life
 and remainder
 man, &c.

Recital of
 disentailing
 deed.

2. WHEREAS by indenture dated on or about the day of
 and made between the said (*tenant for life*) of the first part, the
 said (*remainder man*) of the second part, and (*trustee to uses*) of the
 third part, AFTER RECITING that the said (*tenant for life*) was
 tenant for life of the hereditaments and premises therein and here-
 inafter described, with remainder to the said (*remainder man*) in
 tail male general, with divers remainders over, IT IS WITNESSED,
 that for the purpose of barring and destroying the estate tail of
 the said (*remainder man*), and all estates, rights, interests, and
 powers, to take effect after the determination or in defeasance of
 such estate tail, and to limit the same to the uses thereafter
 expressed, the said (*tenant for life*) did grant and convey, and the
 said (*remainder man*) (with the consent of the said (*tenant for life*),
 as the protector of the said settlement, testified as therein men-
 tioned) did grant, release and confirm unto the said (*trustee to uses*)
 and his heirs, the hereditaments and premises hereinafter described,
 TO HOLD the same, with the appurtenances, unto the said (*trustee*
to uses) and his heirs, to such uses as the said (*tenant for life*) and
 (*remainder man*) should from time to time or at any time by deed
 or deeds appoint, and in default of such appointment, TO THE USE
 of the said (*tenant for life*) and his assigns for life, without im-
 peachment of waste, with the ultimate remainder TO THE USE of
 the said (*remainder man*), his heirs and assigns for ever.

Of contract to
 sell.

3. AND WHEREAS the said (*tenant for life*) and (*remainder man*)
 have contracted to sell the fee-simple and inheritance in possession
 of the said hereditaments and premises, free from incumbrances
 to the said (*purchaser*), in consideration of an annuity or yearly
 rent-charge of 150*l.* to be paid to the said (*tenant for life*) by the
 said (*purchaser*), and to be charged upon the said hereditaments
 and premises during the remainder of the life of the said (*tenant*
for life), and of the sum of 1,300*l.* to be paid by the said (*purchaser*)
 to the said (*remainder man*) in manner hereinafter appearing.

Testatum.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of
 the said recited contract, and in consideration of the said annuity

or yearly rent-charge of 150*l.* sterling, secured to be paid to the said (*tenant for life*) and his assigns during the term of his life as hereinafter mentioned: ALSO in consideration of the sum of 1,300*l.* sterling, at the same time as aforesaid paid by the said (*purchaser*) to the said (*remainder man*) (with the privity and approbation of the said (*tenant for life*), testified as aforesaid), the receipt and payment of which said sum of 1,300*l.*, in manner aforesaid, the said (*tenant for life*) and (*remainder man*) hereby acknowledge, and therefrom DO and each of them DOTH by these presents release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; AND ALSO in consideration of the sum of 5*s.* at the same time as aforesaid paid by the said (*purchaser's trustee*) to the said (*tenant for life*) and (*remainder man*), the receipt whereof is hereby acknowledged, the said (*tenant for life*) DOTH by these presents grant, release, and convey, and the said (*remainder man*), DOTH by these presents grant, release and confirm, unto the said (*purchaser's trustee*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*; INSERT *general words*, and *all-estate clause*, *ut ante*, No. I., clause 5, p. 44.]

No. XXIII.

Conveyance to a
Purchaser in
Fee to uses to
bar dower by a
Tenant for Life
and remainder
man, &c.

5. TO HAVE AND TO HOLD the said (*short general description*) and all and singular other the hereditaments and premises hereinbefore described and hereby granted and released, with their appurtenances, unto the said (*purchaser's trustee*), and his heirs: TO THE USES, upon the trusts, and for the ends, intents and purposes hereinafter limited, expressed and declared of and concerning the same (that is to say),

Habendum to
Purchaser's
trustee.

6. TO THE USE AND INTENT, that the said (*tenant for life*), and his assigns, shall and may yearly and every year, during the term of his natural life, receive and take one annuity or clear yearly rent-charge of 150*l.*, to be issuing and payable out of, and charged and chargeable upon, the said hereditaments and premises hereby granted and released, free from all deductions (except the present or any future tax on property or income), and to be paid to the said (*tenant for life*) by four equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December; the first quarterly payment to be made on the 24th day of June next.

To the use and
intent that
tenant for life
shall receive a
yearly rent-
charge of 150*l.*
for life.

No. XXIII.

Conveyance to a
Purchaser in
Fee to uses to
bar dower by a
Tenant for Life
and remainder
man, &c.

Power of
distress.

7. AND TO THIS FURTHER USE AND INTENT, that in case any quarterly payment of the said annuity or yearly rent-charge of 150*l.*, or any part thereof, shall at any time or times be in arrear and unpaid for the space of fourteen days next after any of the days whereon the same ought to be paid as aforesaid, then and in such case, and so often as the same shall happen, it shall be lawful for the said (*tenant for life*), or his assigns, during the term of his natural life, into and upon all and singular the said hereditaments and premises, or into and upon every or any part thereof, to enter and distrain, and the distress and distresses then and there found to take, lead, drive away, carry and impound, and in pound to detain and keep, until the said annuity or annual rent-charge of 150*l.*, and all arrears thereof, together with the costs incurred in keeping such distress or distresses, shall be fully paid and satisfied; and in default of payment thereof, or of any part thereof respectively, in due time after such distress or distresses shall be so taken, to appraise, sell and dispose of such distress or distresses, or otherwise to act therein according to due course of law, in like manner as in cases of distress taken for nonpayment of rent reserved upon common leases, TO THE INTENT, that thereby and therewith the said (*tenant for life*) and his assigns may be fully paid and satisfied the said annuity or yearly rent-charge of 150*l.*, and all costs and expenses attending the nonpayment and recovery of the same.

Power of entry

8. AND TO THIS FURTHER USE AND INTENT, that in case any quarterly payment of the said annuity or yearly rent-charge of 150*l.*, or any part thereof, shall at any time or times be in arrear and unpaid for the space of twenty-eight days next after any of the days whereon the same ought to be paid as aforesaid, (although no formal or legal demand shall be made), it shall be lawful for the said (*tenant for life*) and his assigns, during the term of his natural life, into and upon all and singular the said hereditaments and premises, or into or upon any part thereof in the name of the whole, to enter, and the same, with the appurtenances, to hold and enjoy, and the rents, issues and profits thereof to receive and take, to and for his and their own use and benefit, until he or they shall thereby and therewith, or by any other lawful ways or means, be fully paid and satisfied the said annuity or yearly rent-charge of 150*l.*, and all arrears thereof, and such arrears of the

same as shall grow due during the time that he or they shall, by virtue of such entry or entries, be in possession of the said hereditaments and premises, or any part thereof; together with all such costs as shall be incurred by the nonpayment or recovery of the same, or any part thereof, or in relation thereto; such possession when taken to be without impeachment of waste.

No. XXIII.

Conveyance to a
Purchaser in
Fee to uses to
bar dower by a
Tenant for Life
and remainder
man, &c.

9. AND AS TO, FOR AND CONCERNING the said hereditaments and premises (so subject and charged with the said annuity or annual rent-charge of 150*l.*, and the remedies for the recovery and enforcing payment of the same), TO THE USE of the said (*trustee for tenant for life*), his executors, administrators and assigns, for and during the term of ninety-nine years henceforth next ensuing, upon the trusts, and for the ends, intents and purposes hereinafter expressed and declared of and concerning the same; and after the expiration or sooner determination of the said term of ninety-nine years, and in the meantime subject thereto,

Limitation to
trustee for life
for ninety-nine
years, if tenant
for life shall so
long live.

10. TO SUCH USES, upon such trusts, and for such ends, intents and purposes, and charged and chargeable in such manner and form, as the said (*purchaser*) shall from time to time, or at any time, by deed or deeds appoint; [CONTINUE *form of limitation to uses to bar dower, ut ante*, No. I., clause 6, p. 46, and *declaration to debar widow of dower, ut ib.*, clause 7, p. 48.]

Limitation to
dower uses.

11. AND AS TO, FOR AND CONCERNING the said term of ninety-nine years hereinbefore limited to the said (*trustee for tenant for life*), his executors, administrators and assigns, determinable as aforesaid, it is hereby declared, that the same is so limited to him, UPON TRUST in case any quarterly payment of the said annuity or yearly rent-charge of 150*l.*, or any part thereof, shall be unpaid for the space of forty days next after any of the days whereon the same ought to be paid as aforesaid (although no formal or legal demand shall be made), that then, and so often as the same shall happen, the said (*trustee for tenant for life*), his executors, administrators or assigns, do and shall from time to time, by and out of the rents, issues or profits of the said hereditaments and premises, or by demising, leasing, selling or mortgaging the same, or any part thereof, for all, or any part of the said term of ninety-nine years,

Declaration of
trust of term to
secure annuity.

No. XXIII. *Conveyance to a Purchaser in Fee to uses to bar dower by a Tenant for Life and remainder man, &c.*

or by bringing actions against the tenants or occupiers of the said premises, or any of them, for the rents then in arrear, or by such other lawful ways or means as to him or them shall seem meet, raise and levy such sum and sums of money as shall be sufficient from time to time to pay and satisfy such arrears of the said annuity or yearly rent-charge of 150*l.*, or so much thereof as shall from time to time happen to be in arrear, together with all such costs, charges and expenses as the said (*tenant for life*) or his assigns, or the said (*trustee for tenant for life*) his executors, administrators or assigns, shall pay or sustain, for or by reason of the nonpayment of the said annuity or annual rent-charge of 150*l.*, at the days and times and in manner hereinbefore appointed for payment thereof; and do and shall pay, apply and dispose of the moneys so to be levied and raised in and towards the payment and satisfaction thereof accordingly. AND SUBJECT and without prejudice to the aforesaid trusts, do and shall stand and be possessed of the said hereditaments and premises, for the residue of the said term of ninety-nine years, and of the rents and profits thereof, or so much of the same as shall not be disposed of for the purposes aforesaid, UPON TRUST for the said (*purchaser*), his heirs and assigns.

Receipt of trustee to be a sufficient discharge.

12. AND IT IS HEREBY DECLARED AND AGREED by and between the said parties to these presents, that the receipt or receipts in writing of the said (*trustee for tenant for life*), his executors, administrators or assigns, shall be a sufficient discharge for any sum or sums of money which shall come to his or their hands by virtue of these presents, and shall effectually exonerate the person or persons paying the same for so much money as in such receipt or receipts shall be expressed to be received, and also from all responsibility with respect to the loss, misapplication or nonapplication thereof, or of any part thereof.

Covenant from purchaser to pay rent-charge.

13. AND the said (*purchaser*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*tenant for life*), that he the said (*purchaser*), his heirs, executors or administrators, shall and will from time to time, and at all times during the natural life of the said (*tenant for life*), well and truly pay or cause to be paid unto the said (*tenant for life*) and his assigns, the

said annuity or yearly rent-charge of 150*l.*, free from all deductions (except the present or any future tax on property or income), on the respective days and times, and in manner hereinbefore appointed for payment thereof.

No. XXIII.

Conveyance to a
Purchaser in
Fee to uses to
be done by a
Tenant for Life
and remainder
man, &c.

14. AND the said (*tenant for life*) and (*remainder man*) do hereby for themselves, their heirs, executors and administrators, jointly and severally covenant with the said (*purchaser's trustee*) and his heirs, that (notwithstanding any act done or permitted by them or either of them to the contrary,) they the said (*mortgagee*), (*tenant for life*) and (*remainder man*), or some or one of them, now have or hath in themselves or himself, good right, full power, and lawful and absolute authority to limit and assure the said hereditaments and premises, with their appurtenances, to the uses and in manner aforesaid, according to the true intent and meaning of these presents. [ADD covenants for quiet enjoyment; freedom from incumbrances, and for further assurance, *ut ante*, No. I., clauses 9, 10, pp. 48 to 51.]

Covenant from
tenant for life
and remainder-
man that they
have good right
to convey.

IN WITNESS, &c.

No. XXIV.

CONVEYANCE WHERE THE ENTIRE CONSIDERATION IS A
RENT-CHARGE.

- | | |
|-------------------------|---|
| 1. Parties. | 4. Habendum to trustee to uses to be therein declared. |
| 2. Recital of contract. | 5. Vendor to receive an annuity of 250 <i>l.</i> to be charged on the premises. |
| 3. Testatum. | |

Parties.

1. THIS INDENTURE, made the day of A.D., 185 ,
BETWEEN (*vendor*) of, &c., of the first part, (*purchaser*) of, &c., of
the second part, (*purchaser's trustee*) of, &c., of the third part, and
(*vendor's trustee*) of the fourth part.

Recital of
contract.

2. WHEREAS the said (*vendor*), being seised in fee simple in
possession of the hereditaments and premises hereinafter described,
has agreed to sell and convey the same to the said (*purchaser*), free
from all incumbrances, in consideration of an annuity or yearly
rent-charge of 250*l.*, to be issuing out of, and chargeable upon, the
said hereditaments and premises, to be paid to the said (*vendor*)
during the remainder of his natural life, in manner hereinafter
appearing.

Testatum.

3. NOW THIS INDENTURE WITNESSETH that, in pursuance of the
said recited contract, and in consideration of the said annuity or
yearly rent-charge of 250*l.*, secured to be paid to the said (*vendor*)
and his assigns during the term of his natural life, as hereinafter
mentioned; AND also in consideration of the sum of 5*s.*, at the same
time as aforesaid paid by the said (*purchaser's trustee*), to the said
(*vendor*) and (*purchaser*), the receipt of which is hereby acknow-
ledged, HE, the said (*vendor*) (at the request and by the direction

of the said (*purchaser*), testified by his being a party hereto), DOTH No. XXIV.
 by these presents grant, release and confirm unto the said (*purchaser's trustee*), and his heirs, ALL, &c. [*DESCRIBE parcels, and* Conveyance
insert general words, all-estate clause, and all-deeds clause, ut ante, where the entire
Consideration is
a Rent-charge.
 No. I., clause 5, pp. 44 to 46.]

4. TO HAVE AND TO HOLD the said (*short general description*), and Habendum.
 all and singular other the premises hereinbefore described, and
 hereby granted and released, with the appurtenances, unto the said
 (*purchaser's trustee*) and his heirs, TO THE USES, upon the trusts,
 and for the ends, intents, and purposes hereinafter limited, expressed
 and declared, of and concerning the same :

5. TO THE USE AND INTENT [*CONTINUE clause as in last prece-* Vendor to
dent, clause 6 ; . AND add power of distress and entry ; limitation to receive an
vendor's trustee for ninety-nine years, if vendor should so long live ; annuity of 250l.
limitation to uses to bar dower ; to be charged
on the premises.
 POWER OF SALE *to secure annuity ;*
 DECLARATION *that trustees' receipts shall be sufficient discharges ;*
 AND COVENANT *from purchaser to pay rent-charge, ut ib.,* clauses
 7 to 13, inclusive, pp. 134 to 137. AND THEN ADD *qualified*
covenants for title from vendor, ut ante, No. I., clauses 8 to 10,
 inclusive, pp. 48 to 50.]

IN WITNESS, &c.

No. XXV.

CONVEYANCE BY A VENDOR OF LANDS OF WHICH HE IS SEISED IN FEE, SUBJECT TO A LIMITATION OVER BY WAY OF EXECUTORY DEVISE, THE EXECUTORY DEVISEE CONCURRING FOR THE PURPOSE OF CONFIRMING THE TITLE.(a)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of will, whereby premises are devised to vendor in fee, subject to a limitation over by way of executory devise. 3. Of death of testator, and probate of his will. 4. Of contract to sell, and of agreement of executory devisee to concur in the conveyance. | <ol style="list-style-type: none"> 5. Testatum. 6. Several qualified covenants from vendor and executory devisee that they have good right to convey. 7. For quiet enjoyment and freedom from incumbrances. 8. For further assurance. |
|---|---|

Parties.

1. THIS INDENTURE, made the day of A.D., 185 ,

Practical
observations.

(a) In the above case, the first taker is supposed to have a numerous and increasing family, so that there is not the remotest probability that the limitation over, by way of executory devise, will ever take effect; at the same time, as it causes a defect in the title which renders it unmarketable, it is well worth the while of the parties taking such prior estate, to purchase the interest of the executory devisee, if it can be obtained upon easy terms; whilst it is equally for the advantage of the latter to make the best bargain he can for releasing his interest in property he can never hope to come into the possession of, or to reap any substantial advantage from it in any other way.

Hitherto an unmarketable title, however good as a holding title, or however remote the chances of disturbance, has rendered an estate unmortgageable and unsaleable, to the inconvenience always, and often to the ruin, of families. It is supposed that there is in this country upwards of ten millions' worth of real property thus locked up. It may now be confidently expected that this fertile source of misery will be removed by the establishment of the *Law Property Assurance Society*, one of whose objects is stated to be the *Assurance of Titles*. As soon as this branch of the society's business is fairly in operation, the greater portion of the existing obstacles to the easy transmission of land will be removed; for, if the author rightly understands the plan of the society, it will then be practicable, by payment of a premium proportioned to the risk, to obtain a guarantee for any title not absolutely bad, but only unmarketable by reason of some defect in evidence. The title to an estate so assured will not

BETWEEN (*vendor*) of the first part, (*executory devisee*) of, &c., of the second part, and (*purchaser*) of, &c., of the third part. No. XXV.

Conveyance by a Vendor of Lands of which he is seized in Fee, &c.

2. WHEREAS (*testator*), late of Esquire, deceased, by his last will dated the day of , duly executed and attested as by law is required (amongst certain other devises and bequests not in anywise affecting the hereditaments and premises herein-after described, and which are also intended to be hereby granted and released), gave and devised such last-mentioned hereditaments and premises unto and to the use of his nephew, the said (*vendor*), his heirs and assigns, but with a proviso, that in case the said (*vendor*) should die without leaving a son or daughter, or other issue in the lifetime of the said (*executory devisee*), then the said testator gave and devised the same hereditaments and premises unto and to the use of the said (*executory devisee*), his heirs and assigns for ever.

Recital of will where premises are devised to vendor in fee, subject to a limitation, or by way of executory devise.

3. AND WHEREAS the said (*testator*) died on or about the day of 18 , without having altered or revoked his said will which was duly proved by his executors therein named, in the Prerogative Court of the Archbishop of Canterbury, on the day of .

Of death of testator and probate of his will.

only be equal to any other, but actually the best that could be taken, because the risks are thus removed which attend upon the very best titles, more or less, and which no care or skill can altogether avoid. This absolute security of title will give to the property so assured a higher value for the purpose of sale or mortgage than the market price of property not so guaranteed, and, therefore, it may be worth the consideration of landowners whether it may not be advisable in all cases to assure their titles; and of mortgagees whether they should not require that this be done before they stake their money upon it. In the case of *Trustees*, who are bound to demand the best security that can be had, it may be a question if they would not be made personally responsible as for a breach of duty, if, having such a means of providing absolute security for their trust moneys, they do not avail themselves of it, and require the mortgagor to give them an assurance of his title. Certainly there can be doubt that, with respect to the other branch of Property Assurance embraced in the scheme of this society, the assurance of leaseholds and other terminable interests in property, it will not only be the duty, but the obvious interest, of all who advance money upon mortgage of such interests to require an assurance for payment of a sum to the extent of the mortgage money, at the least, at the expiration of such terminable interest. The effect of such an assurance is truly stated in the prospectus to be practicable to convert a determinable into a freehold interest, for its permanent value, under all possible contingencies, will then be ascertained.

As this is a matter which must henceforth be seriously considered by all who are professionally concerned in conveyancing, the author of this work has deemed

No. XXV. 4. AND WHEREAS the said (*vendor*) has contracted to sell the said hereditaments and premises, and the fee simple and inheritance thereof in possession free from all incumbrances, to the said (*purchaser*), for the sum of 3,000*l.*; and in order to perfect the title to the said premises, the said (*vendor*) hath requested the said (*executory devisee*), to concur in these presents for the purpose of releasing his estate and interest in the said hereditaments and premises as such executory devisee as aforesaid, which the said

Conveyance by a Vendor of Lands of which he is seised in Fee, &c.

Of contract to sell, and agreement of executory devisee to concur in the conveyance.

it right thus early to direct to it the attention of the reader; and it will, no doubt, require to be often alluded to hereafter. He has, also, subjoined a table of rates at which such assurance may be effected.

Table of Annual Premiums to secure £100 absolutely at the end of any given number of years, for the conversion of Leaseholds and other terminable interests in Real or Personal Property into the value of Freeholds.

Number of Years.	ANNUAL PREMIUM.		Number of Years.	ANNUAL PREMIUM.		Number of Years.	ANNUAL PREMIUM.	
	Without Profits.	With Profits.		Without Profits.	With Profits.		Without Profits.	With Profits.
100	£ s. d.	£ s. d.	68	£ s. d.	£ s. d.	36	£ s. d.	£ s. d.
99	0 3 3	0 3 8	67	0 9 3	0 10 5	35	1 11 7	1 15 5
98	0 3 4	0 3 9	66	0 9 7	0 10 9	34	1 13 1	1 17 2
97	0 3 6	0 3 10	65	0 9 11	0 11 0	33	1 14 7	1 18 10
96	0 3 7	0 3 11	64	0 10 3	0 11 5	32	1 16 4	2 0 10
95	0 3 9	0 4 1	63	0 10 8	0 11 9	31	1 18 1	2 2 10
94	0 3 10	0 4 2	62	0 11 0	0 12 6	30	2 0 0	2 5 0
93	0 3 11	0 4 4	61	0 11 5	0 12 9	29	2 2 0	2 7 1
92	0 4 1	0 4 6	60	0 11 10	0 13 2	28	2 4 2	2 9 8
91	0 4 3	0 4 9	59	0 12 3	0 13 9	27	2 6 7	2 12 4
90	0 4 4	0 4 11	58	0 12 8	0 14 3	26	2 9 1	2 15 2
89	0 4 6	0 5 1	57	0 13 2	0 14 10	25	2 11 10	2 18 4
88	0 4 8	0 5 4	56	0 13 8	0 15 4	24	2 14 10	3 1 7
87	0 4 9	0 5 6	55	0 14 2	0 16 0	23	2 18 1	3 5 5
86	0 4 11	0 5 8	54	0 14 8	0 16 6	22	3 1 7	3 9 2
85	0 5 1	0 5 10	53	0 15 3	0 17 2	21	3 5 6	3 13 7
84	0 5 3	0 6 0	52	0 15 10	0 17 11	20	3 9 9	3 18 4
83	0 5 5	0 6 2	51	0 16 5	0 18 6	19	3 14 5	4 3 8
82	0 5 8	0 6 5	50	0 17 0	0 19 2	18	3 19 7	4 9 5
81	0 5 10	0 6 7	49	0 17 9	1 0 0	17	4 5 5	4 16 0
80	0 6 0	0 6 9	48	0 18 5	1 0 9	16	4 11 11	5 3 3
79	0 6 2	0 6 11	47	0 19 2	1 1 11	15	4 19 2	5 11 6
78	0 6 5	0 7 4	46	0 19 11	1 2 5	14	5 7 6	6 0 10
77	0 6 8	0 7 6	45	1 0 8	1 3 2	13	5 17 0	6 11 7
76	0 6 10	0 7 9	44	1 1 7	1 4 3	12	6 8 0	7 4 0
75	0 7 1	0 8 0	43	1 2 5	1 5 4	11	7 0 11	7 18 5
74	0 7 4	0 8 2	42	1 3 4	1 6 3	10	7 16 1	8 18 8
73	0 7 7	0 8 5	41	1 4 4	1 7 4	9	8 14 6	9 16 3
72	0 7 11	0 8 9	40	1 5 5	1 8 2	8	9 16 10	
71	0 8 1	0 9 1	39	1 6 6	1 9 9	7	11 4 11	
70	0 8 4	0 9 4	38	1 7 8	1 11 3	6	13 1 0	
69	0 8 8	0 9 8	37	1 8 11	1 12 6	5	15 9 3	
	0 8 11	0 9 11		1 10 2	1 14 11		18 16 9	

(*executory devisee*) has agreed to do, upon receiving the sum of 100*l.*, which it has been agreed shall be paid to him out of the said purchase-money or sum of 3,000*l.*

No. XXV.

Conveyance by a
Vendor of
Lands of which
he is seized in
Fee, &c.

Testatum.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and also in consideration of the sum of 100*l.* sterling, paid by the said (*purchaser*) to the said (*executory devisee*), on the execution hereof (at the request and by the direction of the said (*vendor*), (testified by his being a party hereto), the receipt of which the said (*executory devisee*) hereby acknowledges, and therefrom doth release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns. AND ALSO in consideration of the further sum of 2,900*l.* sterling, at the same time as aforesaid paid by the said (*purchaser*) to the said (*vendor*), the payment and receipt in manner aforesaid of which said two several sums of 100*l.* and 2,900*l.*, making together the sum of 3,000*l.* the purchase-money of the said premises, the said (*vendor*) hereby acknowledges, and therefrom doth release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators, and assigns, HE, the said (*vendor*), DOTH by these presents grant, release, and convey, and the said (*executory devisee*), DOTH by these presents grant, release, quit claim, ratify and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [DESCRIBE *parcels*; INSERT *general words*; *all-estate clause*, and *all-deeds clause*, *ut ante*, No. I., clause 5, pp. 44 to 46. INSERT ALSO, *habendum to purchaser in fee*, and *declaration to debar widow of dower*, *ut ante*, No. I., clauses 3 and 4, pp. 55, 56.]

6. AND each of them the said (*vendor*) and (*executory devisee*), for themselves and their respective heirs, executors and administrators, and according to their respective estates and interests in the premises, do hereby severally covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act done or permitted by them the said (*vendor*), or the said (*executory devisee*) respectively, or the said (*testator*) deceased to the contrary), they the said (*vendor*) and (*executory devisee*) respectively, according to their several estates and interests in the premises as aforesaid, now have in themselves respectively good right to convey and assure the said hereditaments and premises hereby granted and released,

Several qualified
covenants from
vendor and
executory
devisee that
they have good
right to convey

No. XXV. with the appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents.

Conveyance by a
Vendor of
Lands of which
he is seised in
Fee, &c.

For quiet
enjoyment and
freedom from
incumbrances.

7. AND ALSO (that notwithstanding any such act as aforesaid), the said hereditaments and premises shall or may, from time to time and at all times, be peaceably and quietly held and enjoyed accordingly, without let, suit, eviction, ejection, interruption, or denial, of or by the said (*vendor*) or (*executory devisee*) respectively, or any other person or persons whomsoever, rightfully claiming or to claim, by, from, through, under, or in trust for them respectively, or by, from, through, under or in trust for the said (*testator*) deceased; AND that free from all former and other estates, rights, titles, liens, charges, and incumbrances whatsoever, made or created by the said (*vendor*) or (*executory devisee*) respectively, or the said (*testator*) deceased.

For further
assurance.

8. AND MOREOVER, that the said (*vendor*) and (*executory devisee*), and all persons rightfully claiming any estate or interest in the said hereditaments and premises, under or in trust for them respectively, shall and will, from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his heirs or assigns, make, do, acknowledge, enter into, execute, and perfect all such further assurances for the more perfectly or satisfactorily assuring and confirming the said hereditaments and premises hereby granted and released unto and to the use of the said (*purchaser*), his heirs and assigns, according to the true intent and meaning of these presents, as the said (*purchaser*), his heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

IN WITNESS, &c.

No. XXVI.

CONVEYANCE OF A REMAINDER IN FEE LIMITED BY WAY OF EXECUTORY DEVISE TO A PURCHASER TO USES TO BAR DOWER, IN CONSIDERATION OF STOCK TO BE INVESTED IN THE NAMES OF TRUSTEES TO BE TRANSFERRED TO THE VENDOR, UPON HIS CONTINGENT ESTATE BECOMING VESTED, OR TO BE TRANSFERRED TO THE PURCHASER, IN CASE OF ITS FAILING TO TAKE EFFECT. (a)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties, 2. Recital of will whereby property is devised to testator's daughter in fee, with a limitation over by way of executory devise to vendor. 3. Recital that daughter is of advanced age and unmarried. 4. Recital of contract to purchase in consideration of £ Three per Cent Reduced Annuities to be invested in the names of trustees. 5. Testatum. 6. Habendum to dower uses. 7. Covenant from vendor that he has good right to convey. 8. For quiet enjoyment, and freedom from incumbrances. | <ol style="list-style-type: none"> 9. For further assurance. 10. Declaration that trustees shall stand possessed of stock; upon trust to pay dividends to vendor during lifetime of testator's daughter, and in case of her death in his lifetime, 11. To transfer stock to vendor; but in case vendor shall die in testator's daughter's lifetime, or, surviving her, shall die in the lifetime of any of her issue, then 12. Upon trust for purchaser absolutely. 13. Power to vary securities. 14. Trustees' receipts to be sufficient discharges. 15. Power to change trustees. |
|--|--|

1. THIS INDENTURE, made the day of A.D. 18 , Parties.
BETWEEN (*vendor*), of, &c., of the first part, (*purchaser*), of, &c., of

(a) Before the passing of the recent Stamp Act, 13 & 14 Vict. c. 97, a Practical common deed stamp would have covered every conveyance where the consideration was a transfer of stock, without any reference to the amount; as none of the pre-existing Stamp Acts imposed any *ad valorem* duty on sales in consideration of stock. But the act 13 & 14 Vict. expressly directs that where the consideration, or part of the consideration shall be any stock in any of the

No. XXVI.

Conveyance
of a remainder
in Fee
limited by way
of Executory
Devise
to a Purchaser
to uses to
bar Dower, &c.

Recital of will
whereby
property is
devised to
testator's
daughter in fee,
subject to a
limitation over
by way of
executory
devise to
vendor.

the second part, (*purchaser's dower trustee*), of, &c., of the third part, and (*two trustees*), of the fourth part. (a)

2. WHEREAS (*testator*), late of , Esquire, deceased, by his last will and testament in writing, dated the day of , and duly executed and attested, as is by law required, devised all his lands, tenements, hereditaments, and real estate whatsoever and wheresoever, unto and to the use of his only daughter (*daughter's name*), her heirs and assigns; but with a proviso, that if she should die without leaving any son or child, or other issue in the lifetime of his nephew, the said (*vendor*), THEN the said (*testator*) gave and devised his said hereditaments and premises unto and to the use of the said (*vendor*), his heirs and assigns for ever. (b) [INSERT *recital of death of testator and probate of his will, as in last precedent, clause 3.*]

public funds, or any government debenture, or stock of the Bank of England, or Bank of Ireland, or any debenture or stock of any corporation, company, society, or persons or person, payable only at the will of the debtor, the *ad valorem* duty shall be calculated (taking the same respectively, whether constituting the whole, or a part only of such consideration,) according to the average selling price thereof respectively, on the day or on either of the ten days preceding the day of the date of the deed of conveyance; or if no sale shall have taken place within such ten days, then according to the average selling price thereof on the day of the last preceding sale; and if such consideration, or part of such consideration shall be a mortgage, judgment, or bond, or debenture, the amount whereof shall be recoverable by the holder, or any other security whatsoever, whether payable in money or otherwise, then such calculation shall be made, according to the sum due thereon, both for principal and interest.

Practical
observations.

(b) As the dying without issue in the above-recited will does not import an indefinite failure of issue, but is restricted within the period allowed for an executory devise to take effect, viz., the lifetime of a person in being, the daughter will take an estate in fee-simple, subject to a limitation over in fee to the vendor by way of executory devise: (*Pells v. Brown*, Cro. Jac. 590; *Hanbury v. Cockerell*, 1 Roll. Abr. 835; *Porter v. Bradley*, 3 T. R. 143; *Doe dem. Bamfield v. Welton*, 2 Bos. & Pull. 324; *Sheers v. Jeffery*, 7 T. R. 143; *Doe dem. Smith v. Webber*, 1 B. & A. 713; *Doe dem. King v. Frost*, 3 B. & Ald. 646.) Now, as an executory devise is incapable of being barred by the party taking the previous estate (1 Hughes Pract. Sales, 365, 2nd edit.), no mode of assurance adopted by the party taking the preceding estate can affect the executory limitation over. But, in the case above supposed, such limitation over is liable to be defeated by the happening of two contingent events: first, by the death of the executory devisee in the lifetime of the first taker; secondly, by such first taker leaving issue who shall survive such executory devisee. Now the latter event, in the case above supposed, is very improbable; because the first taker here is a female upwards of sixty years of age, and unmarried, so that if she were to marry, it is scarcely probable she would have any issue. The other contingency, viz., the vendor surviving her, is, however, less certain, for even supposing him to be much the younger of the two, and to have good health, and an apparently sound constitution in his favour, still life is at all times uncertain; for weak and sickly persons are not unfrequently found to outlive those who are both strong and healthy. In the present assurance, in order effectually to indemnify the purchaser from loss, beyond the amount of the

3. AND WHEREAS the said (*daughter*) is now upwards of sixty years of age, and has never been married. No. XXVI.

4. AND WHEREAS the said (*vendor*) has contracted to sell his contingent reversionary interest in the said hereditaments and premises to the said (*purchaser*) in consideration of the sum of £ Three per Cent. Reduced Annuities to be purchased by the said (*purchaser*), and transferred by him into the joint names of the said (*trustees*), upon the trusts hereinafter expressed and declared; which purchase and transfer the said (*purchaser*) hath accordingly made, and the same sum of £ Three per Cent. Reduced Annuities is now standing in the joint names of the said (*trustees*), in the books of the Governor and Company of the Bank of England, as they the said (*trustees*) do hereby testify and acknowledge.

Conveyance
of a remainder
in Fee
limited by way
of Executory
Devise
to a Purchaser
to uses to
bar Dower, &c.

Recital
that daughter
is of advanced
age and
unmarried.

Recital
of contract to
purchase in
consideration of
£ Three
per Cent.
Reduced
Annuities to
be invested in
the names of
trustees.

Testatum.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of £ Three per Cent. Reduced Annuities being so purchased and transferred by the said (*purchaser*) to the said (*trustees*), and also in consideration of the sum of 5*s.* sterling paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which is hereby acknowledged, HE the said (*vendor*) DOETH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL that the contingent reversionary interest expectant as aforesaid of him the said (*vendor*) of and in ALL [DESCRIBE *parcels*], AND also of and in all houses, &c. [HERE INSERT *general words, all-estate clause, all-deeds clause, ut ante*, No. I., clause 5, pp. 44 to 46].

6. TO HAVE AND TO HOLD the said (*short general description*) and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances (subject nevertheless to the pre-existing estate so limited to the said (*testator's daughter*),) unto the said (*purchaser*) and his heirs,

Habendum to
dower uses.

annual dividends payable to the vendor, during the first taker's lifetime, the purchase-money is to be invested in the funds in the names of joint trustees, one appointed by the vendor, and the other by the purchaser. The vendor is to receive the dividends until the executory devise becomes absolute, or fails to take effect. In the former instance the stock is to be transferred to vendor, in the latter to be retransferred to the purchaser.

No. XXVI. *Conveyance of a remainder in Fee limited by way of Executory Devise to a Purchaser to uses to bar Dower, &c.* TO THE USE of such person or persons, and for such estate or estates, and charged and chargeable in such manner as the said (*purchaser*) shall from time to time, or at any time by deed or deeds appoint; and in default of such appointment, and so far as any such appointment, if incomplete, shall not extend, TO THE USE of the said (*purchaser*) and his assigns, for and during the term of his natural life, without impeachment of waste; AND immediately after the determination of that estate, by any means in his lifetime, TO THE USE of the said (*dower trustee*), his executors and administrators, during the life of the said (*purchaser*), UPON TRUST for the said (*purchaser*) and his assigns; and after the determination of the said hereinbefore lastly limited estate, TO THE USE of the said (*purchaser*), his heirs and assigns for ever. [INSERT *declaration to debar widow of dower, ut ante*, No. I., clause 7, p. 48.]

Covenant from vendor that he has good right to convey.

7. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act, deed, matter or thing whatsoever, done or permitted by him the said (*vendor*), or the said (*testator*), deceased, to the contrary,) he the said (*vendor*) now hath in himself good right, full power, and lawful and absolute authority to release and convey the said hereditaments and premises, subject as aforesaid, to the uses and in manner aforesaid, according to the true intent and meaning of these presents.

For quiet enjoyment, and freedom from incumbrances.

8. AND ALSO that (notwithstanding any such act, deed, matter and thing as aforesaid,) the same hereditaments and premises shall, subject as aforesaid, be held and enjoyed according to the limitations hereinbefore declared concerning the same; AND THAT freely, clearly and absolutely saved harmless, and kept indemnified by the said (*vendor*), his heirs, executors or administrators, of and from all former and other estates, rights, titles, liens, charges and incumbrances whatsoever made or created by the said (*vendor*) or the said (*testator*), deceased, or any other person or persons whomsoever rightfully claiming under him or them (save and except the contingent estate or interest of the said (*testator's daughter*) so limited as aforesaid.)

For further assurance.

9. AND MOREOVER that the said (*vendor*), and all persons right-

fully claiming any estate or interest, legal or equitable, in the said hereditaments and premises under or in trust for him, or the said (*testator*), deceased, (other than, and except the said (*testator's daughter*) and persons rightfully claiming under her,) shall and will from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his appointees, heirs or assigns, make, do, acknowledge, enter into, execute and perfect all such lawful acts, deeds, conveyances and assurances in the law whatsoever, for the more perfectly or satisfactorily conveying and assuring the said hereditaments and premises to the uses aforesaid, and subject as aforesaid, according to the true intent and meaning of these presents, as the said (*purchaser*), his appointees, heirs or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed.

No. XXVI.

Conveyance of a remainder in Fee limited by way of Executory Devise to a Purchaser to uses to be Donee, &c.

10. AND IT IS HEREBY DECLARED AND AGREED by and between the said parties hereto, that the said (*trustees*) and the survivor of them, his executors or administrators, do and shall stand and be possessed of the said sum of £ Three per Cent. Reduced Annuities so transferred to, and standing in their names as aforesaid, UPON TRUST yearly and every year during the natural life of the said (*testator's daughter*) to pay the interest, dividends and produce thereof, as and when the same shall accrue due, unto the said (*vendor*) and his assigns; and in case the said (*testator's daughter*) shall happen to die in the lifetime of the said (*vendor*), without leaving any child, children, or other lawful issue her surviving, then,

Declaration that trustees stand possessed of stock.

Upon trust to pay dividends to vendor during the lifetime to testator's daughter, and in case of her death in his lifetime,

11. UPON TRUST to pay and transfer the said sum of £ Three per Cent. Reduced Annuities unto and into the name of the said (*vendor*), his executors, administrators and assigns, to and for his and their absolute use and benefit; but in case the said (*vendor*) shall die in the lifetime of the said (*testator's daughter*), or, surviving her, shall happen to die in the lifetime of any child, children, or other lawful issue of her the said (*testator's daughter*), then UPON TRUST that they the said (*trustees*), or the survivor of them, his executors or administrators, do and shall stand and be possessed of the said sum of £ Three per Cent. Reduced Annuities.

To transfer stock to vendor; but in case vendor shall die in testator's daughter's lifetime, or, surviving her, shall die in the lifetime of any of her issue, then,

No. XXVI.

*Conveyance
of a Purchaser
in Fee
limited by way
of Executory
Devise
to a Purchaser
to uses to
bar Dower, &c.*

Upon trust
for purchaser
absolutely.
Power to vary
securities.

12. UPON TRUST for the said (*purchaser*), his executors, administrators and assigns, and to pay and transfer the same to him and them accordingly, to and for his and their absolute use and benefit; and to, for and upon no other trust, end, intent or purpose whatsoever.

13. PROVIDED ALWAYS, and it is hereby further declared and agreed by and between the said parties hereto, that it shall be lawful for the said (*trustees*) and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, with the consent in writing of the said (*vendor*) or his assigns, and of the said (*purchaser*), his executors, administrators or assigns, to sell out and dispose of the said sum of £ Three per Cent. Reduced Annuities, and invest the produce in the names of the said (*trustees*) or the survivor of them, his executors or administrators, in or upon any like, or any other, government or parliamentary stocks or funds of Great Britain, or at interest upon good and sufficient freehold, leasehold or copyhold estates in England or Wales, but not in Ireland; and so from time to time to vary such stocks, funds and securities wherein the produce of the said trust premises shall from time to time be invested; and do and shall stand and be possessed thereof upon the same trusts as are hereinbefore declared of and concerning the said sum of £ Three per Cent. Reduced Annuities, and the interest, dividends and annual produce thereof respectively.

Trustees'
receipts to be
sufficient
discharges.

14. AND IT IS HEREBY FURTHER DECLARED AND AGREED by and between the said parties hereto, that the receipt or receipts in writing of the (*trustees*) or (*trustee*) for the time being of these presents shall be an effectual discharge for the moneys from time to time to be called in, or to arise from the sale or other disposition of any such stocks, funds or securities as aforesaid, and for all such other moneys as such trustees or trustee shall receive by virtue of the trusts of these presents, and shall exonerate the person or persons paying the same from all responsibility with respect to the application thereof.

Power to change
trustees.

15. PROVIDED ALWAYS, and it is hereby moreover declared and agreed by and between the said parties hereto, that in case of the

death, continued residence abroad, neglect, refusal or incapacity of either of them the said (*trustees*), or of any trustee or trustees to be appointed in his or their stead or place, it shall be lawful for the acting trustee or trustees for the time being of these presents, or the executors or administrators of such acting trustee as aforesaid, with the consent in writing of the said (*vendor*) or his assigns, and of the said (*purchaser*), his executors, administrators or assigns, to appoint a new trustee or trustees in the place or stead of such trustee or trustees so dying, continuing to reside abroad, neglecting, refusing, or becoming incapable to act as aforesaid, and thereupon the said trust estate, trust moneys and premises shall be forthwith transferred and assigned, in such manner as that the same may vest in such new trustee or trustees, either jointly with the surviving or continuing trustee or trustees, or solely, as the case may require, and in his, her, or their executors, administrators, or assigns, upon the trusts, and for the ends, intents, and purposes hereinbefore declared; AND that every such new trustee or trustees, either before or after such assignment and transfer, shall and may have and exercise the same powers as if he or they had been originally appointed a trustee or trustees by these presents; and that no trustee hereby appointed, or to be appointed as aforesaid, shall be responsible for the acts, deeds, or defaults of any co-trustee, or co-trustees; nor for involuntary losses; nor for moneys received under receipts in which they shall join only for conformity; nor be accountable for the sufficiency of any banker, broker, attorney, solicitor or other person with whom, in the execution of these trusts, any of the said trust moneys may be deposited for safe custody or otherwise, or of any stocks, funds, and securities in or upon which the same trust moneys may be invested, unless the same shall happen through the wilful default of such trustee respectively; and that it shall be lawful for the present or any future trustee or trustees of these presents to reimburse themselves and each other out of the said trust moneys and premises, or out of any moneys that may come to their respective hands by virtue of these presents, all costs, charges and expenses to be incurred by them in the execution of the aforesaid trusts or in relation thereto.

No. XXVI.

*Conveyance
of a remainder
in Fee
limited by way
of Executory
Devise
to a Purchaser
to uses to
bar Dower, &c.*

*Indemnity to
trustees.*

IN WITNESS, &c.

No. XXVII.

CONVEYANCE BY ASSIGNEES OF A BANKRUPT TO A
PURCHASER IN FEE.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of petition in bankruptcy. 3. That premises had been put up to auction, and that purchaser was highest bidder. | <ol style="list-style-type: none"> 4. Recital that bankrupt had agreed to concur in conveyance. 5. Testatum. |
|---|--|

Parties.

1. THIS INDENTURE, made the day of A.D., 18 ,
BETWEEN (*official assignee*) of, &c., and (*creditors' assignees*) of, &c.
[assignees of the estate and effects of (*bankrupt*), late of, &c., a
bankrupt,] of the first part; the said (*bankrupt*) of the second part;
and (*purchaser*) of the third part.

Recital of
petition in
bankruptcy.

2. WHEREAS, a petition for adjudication in bankruptcy was on
or about the day of , filed against the said (*bankrupt*), who
was thereupon adjudged a bankrupt accordingly; and the said
(*official assignee*) was appointed the official assignee (*a*), and the
said (*creditors' assignees*) have been chosen assignees of his estate
and effects, by the creditors of the said (*bankrupt.*) (*b*)

Official assignee,
how appointed.

(*a*) An official assignee is in all cases appointed by the Court of Bankruptcy, an assignee of the bankrupt's estate and effects, to act with the assignee or assignees to be chosen by the creditors; and all the personal estate and effects, and the rents and profits of the real estate, and the proceeds of the sale of all the estate and effects, real and personal, of the bankrupt, shall in every case be possessed and received by such official assignee alone, save where it shall otherwise be directed by the court: (stat. 12 & 13 Vict. c. 106, s. 39.)

Assignee of the
bankrupt's
estate, when
and how chosen.

(*b*) At the first public sitting appointed by the court, under any bankruptcy or any adjournment thereof, assignees of the bankrupt's estate and effects, shall and may be chosen and appointed, and all creditors who have proved debts

3. AND WHEREAS the hereditaments and premises hereinafter described, forming part of the said (*bankrupt's*) estate, were on the day of offered for sale by public auction by the said (*creditors' assignees*) at , according to certain printed conditions of sale, at which sale the said (*purchaser*), being the highest bidder, was declared the purchaser of the said premises at the sum of £1,800.

No. XXVII

Conveyance by Assignees of a Bankrupt to a Purchaser in Fee.

That premises had been put up to auction and that purchaser was highest bidder.

4. AND WHEREAS the said (*bankrupt*), at the request of the said (*creditors' assignees*), hath agreed to concur in these presents in manner hereinafter mentioned. (c)

That bankrupt has agreed to concur in conveyance.

to the amount of ten pounds and upwards, shall be entitled to vote in such choice; and the choice shall be made by the major part in value of the creditors so entitled to vote: provided that the court shall have power to reject any person so chosen, who shall appear to such court unfit to be an assignee, or to remove any assignee, and upon such rejection or removal, a new choice and appointment of another assignee shall be made in like manner: (stat. 12 & 13 Vict. c. 106, s. 139.)

Court may reject or remove any person chosen as unfit.

When any person shall have been adjudged a bankrupt, all lands, tenements and hereditaments, except copy or customary hold in England, Scotland, Ireland, or in any of the dominions, plantations or colonies belonging to Her Majesty, to which any bankrupt is entitled in any of such lands, tenements or hereditaments, will become absolutely vested in the assignees for the time being for the benefit of the creditors of the bankrupt without any deed of conveyance for that purpose; and as often as any such assignee or assignees shall die, or be lawfully removed or displaced, and a new assignee or assignees shall be duly appointed, such of the aforesaid real estate, as shall remain unsold or unconveyed, shall, by virtue of such appointment, vest in the new assignee or assignees, either alone or jointly with the existing assignees, as the case may require, without any conveyance for that purpose: (stat. 12 & 13 Vict. c. 106, s. 142.) So that by the above enactment, the assignees take, by virtue of their appointment, all property, whether real or personal, and whether in possession, reversion, remainder or expectancy in England or abroad, which the bankrupt is entitled to for his own benefit: (Wise's Bankrupt Law, 93.)

Real estate vested in assignees.

(c) A bankrupt is usually made a party to the conveyance of his estate, to obviate any difficulty to which a purchaser might otherwise be subjected in maintaining or proving the title. By a late bankrupt act (6 Geo. 4, c. 16, s. 28), the Lord Chancellor is empowered, upon petition, either by the assignees or purchaser, to direct the bankrupt to join in the conveyance; and, in case of his refusal, the order of the court will have the same effect as if he had actually concurred: (*Ex parte Thomas*, 1 Moo. & M. 649; 2 Hughes Pract. Sales, 259.) And now, under a still more recent enactment, the court, upon the application of the assignees, or of any purchaser from them, of any part of the bankrupt's estate, if such bankrupt shall not try the validity of the adjudication, or if there shall have been a verdict at law establishing its validity, to order the bankrupt to join in any conveyance of such estate, or any part thereof; and if he shall not execute such conveyance within the time directed by the order, such bankrupt, and all persons claiming under him, shall be stopped from objecting to the validity of such conveyance: and all estate, right or title which such bankrupt had therein, shall be as effectually barred by such order, as if such conveyance had been executed by him: (stat. 12 & 13 Vict. c. 106, s. 148.)

Practical observations.

No. XXVII.

Conveyance by
Assignees of a
Bankrupt to a
Purchaser in
Fee.

Testatum.

5. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of 1,800*l.* sterling, this day paid by the said (*purchaser*), to the said (*official assignee*), (*d*) the receipt of which the said official assignee hereby acknowledges, and therefrom doth, by these presents, release the said (*purchaser*), his heirs, executors, administrators and assigns for ever; and also in consideration of the sum of 5*s.* each, at the same time paid by the said (*purchaser*) to the said (*creditors' assignees*) and (*bankrupt*), the several receipts whereof are hereby respectively acknowledged, the said (*official assignee and creditors' assignees*) do, and each and every of them doth, by these presents, according to their respective estates and interests in the premises, grant and release, and the said (*bankrupt*) doth, by these presents, grant, release and confirm, unto the said (*purchaser*) and his heirs. [HERE DESCRIBE *parcels*; INSERT *general words*; *all-estate clause*, and *all-deeds clause*, as in No. I., clause 5, p. 44; *habendum to purchaser in fee, ut ante*, No. III., clause 3, p. 55; *then add declaration to debar widow of dower, ut ante*, No. I., clause 8, p. 48.]

IN WITNESS, &c.

(*d*) All proceeds of the bankrupt's estate must be paid to the official assignee: (stat. 12 & 13 Vict. c. 106, s. 39.)

No. XXVIII.

CONVEYANCE IN FEE TO USES TO BAR DOWER, BY THE ASSIGNEES OF AN INSOLVENT DEBTOR, WITH THE CONCURRENCE OF THE INSOLVENT AND MORTGAGEE BY DEMISE, AND MORTGAGEE IN FEE. VARIATION WHERE THE PROCEEDINGS ARE UNDER THE STATUTE OF THE 1 & 2 VICT. c. 110. (a)

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of mortgage by demise, and of further charge to mortgagee in fee. 3. Of insolvent's petition, and appointment of official assignee. 4. Of order for protection of insolvent, and of appointment of creditors' assignee. 5. That assignee had convened a meeting of the creditors, who had resolved to sell the insolvent's real estate. 6. That assignee had put up the premises for sale, and that purchaser had been declared the purchaser. 7. That principal moneys and an arrear of interest is due to mortgagee by demise. | <ol style="list-style-type: none"> 8. That principal moneys and an arrear of interest is due to mortgagee in fee. 9. That insolvent has agreed to concur in conveyance. 10. Testatum. 11. Covenant from mortgagees and assignees that they have done no act to incumber. <p style="text-align: center;"><i>Substituted Clauses.</i></p> <ol style="list-style-type: none"> A. Recital that insolvent has petitioned the court under the provisions of stat. 1 & 2 Vict. c. 110. B. Of the appointment of creditors' assignee. C. Variation where the petition is by the execution creditor. |
|---|--|

1. THIS INDENTURE, made the day of A.D., 18 , Parties.
BETWEEN (*mortgagee in fee*), of, &c., of the first part, (*mortgagee*

(a) By the statute above referred to (1 & 2 Vict. c. 110), any person in Persons imprisoned for debt is empowered to apply to the Court for Relief of Insolvent ^{prisoned for debt} Debtors in a summary way, upon stating in his petition that he is willing that may apply to

No. XXVIII. *by demise*) of, &c., of the second part, (*official assignee*) of, &c., of the third part, (*creditors' assignee*) of &c., of the fourth part, (*insolvent*) of, &c., of the fifth part, (*purchaser*) of, &c., of the sixth part, and (*purchaser's dower trustee*) of, &c., of the seventh part,

Conveyance in
Fee to Uses to
bar Dower by the
Assignees of
an Insolvent
Debtor, &c.

the court in a
summary way
for discharge.

Detaining creditors of prisoners in execution may apply by petition to Insolvent Debtors' Court for an order to vest the debtor's personal estate in the provisional assignee of the court.

Prisoner's estate and effects, except wearing apparel, &c., not exceeding 20*l.*, to be vested in provisional assignee.

Provisional assignee to take possession of estates, &c., and to sell the same if the court directs.

Power of Insolvent Debtors' Court to appoint creditors' assignees.

Sale of estate and effects to be made immediately.

Creditors to meet thirty days before sale of real estate.

Meeting to be advertised.

Assignee may surrender and convey copyhold or customary estate.

all his estate and effects shall be vested in the provisional assignee for the time being of the estate and effects of insolvent debtors in *England*, according to the provisions of this act, and shall pray to be discharged from custody, and to have further liberty of his person, against the demands for which such prisoner shall be then in custody, and against the demands of all other persons who shall be or claim to be creditors of such prisoner, at the time of presenting such petition; which petition shall be subscribed by the said prisoner, and shall forthwith be filed in the said court: (sect. 35.)

By the section next immediately following (sect. 36), detaining creditors of prisoners in execution are empowered to apply by petition to the Insolvent Debtors' Court for an order to vest the debtor's real and personal estate and effects in the provisional assignee for the time being of insolvent debtors in *England*: (sect. 36.) It then proceeds to enact that upon the filing of such petition, either by such prisoner or creditor, the whole of the estate and effects of the insolvent not exceeding 20*l.* and his future estate are to be vested in the provisional assignee by order of the court: (sect. 37.)

Such provisional assignee is also empowered to take possession of the real and personal estate and effects of every such prisoner so vested in him as aforesaid (sect. 42), and if the court shall so order, to sell the same according to the provisions thereafter made with regard to the sale of such estate: (as to which see sect. 68.)

It afterwards proceeds to enact, that it shall be lawful for the said Court for the Relief of Insolvent Debtors, at any time after the making of such vesting order as aforesaid, to appoint a proper person or persons to be assignee or assignees of the estate and effects of such prisoner, for the purposes of this act; and when such assignee or assignees shall have signified to the said court his or their acceptance of the appointment, the estate, effects, rights and powers of such prisoner, vested in such provisional assignee as aforesaid, shall immediately, by virtue of such appointment, and without any conveyance or assignment, vest in the assignee or assignees in trust for the benefit of the creditors of such prisoner.

And it is also further enacted, that the assignee or assignees of the estate and effects of any such prisoner, shall, with all convenient speed after his or their appointment, make sale of all the prisoner's estate and effects; and if such prisoner shall be interested in or entitled to any real estate, either in possession, reversion or expectancy, such real estate, within the space of six calendar months after the appointment of such assignee or assignees, or within such other time as the said court shall direct, *shall be sold by public auction*, in such manner, and at such place or places as shall, thirty days before any such sale, be approved in writing under their hands by the major part in value of the creditors of such prisoner entitled to the benefit thereof, who shall meet together on notice of such meeting published fourteen days previous thereto in the *London Gazette*, and also in some daily newspaper printed and published in London or within the bills of mortality, if the prisoner, before his or her going to prison, resided in London or within the bills of mortality; and if the prisoner resided elsewhere within the United Kingdom, then in some printed newspaper which shall be generally circulated in or near such place where such prisoner resided at the time aforesaid; and in case such prisoner shall be entitled to any copyhold or customary estate, a certified copy of such vesting order as aforesaid, and a like copy of the appointment of such assignee or assignees as aforesaid, shall be entered on the court rolls of the manor of which such copyhold or customary estate shall be holden, and thereupon it shall be lawful for such assignee or assignees to surrender or convey such copyhold or customary estate to any

[RECITE mortgage by demise, *ut ante*, No. XVIII., clause 2; AND No. XXVIII.
ALSO mortgage in fee, *ut ante* No. XVII. clause 3, p. 105.]

2. AND WHEREAS by indenture dated the day of , in

*Conveyance in
Fee to Uses to
bar Dower by the
Assignees of
an Insolvent
Debtor, &c.*

purchaser or purchasers of the same, from such assignee or assignees as the said court shall direct; and the rents and profits thereof shall be in the meantime received by the assignee or assignees for the benefit of such prisoner, without prejudice nevertheless to the lord or lords of the manor of which any such copyhold or customary estate shall be holden: (sect. 47.)

*Of further
charge to
mortgagee
in fee.*

The act then, after reciting that "whereas certain persons whose estates may be entitled to annuities for their own lives, or other uncertain interests, or to reversionary or contingent interests, or to property under such circumstances that the immediate sale thereof for payment of their debts may be very prejudicial to them, and deprive them of the means of subsistence which they might otherwise have, after payment of their debts; and it may be proper in some cases to authorize the raising of money by way of mortgage for payment of the debts, or part of the debts, of such person, instead of selling the property of that person for such purpose," proceeds to enact "that in all such cases it shall be lawful for the said court to take into consideration all circumstances affecting the property of any such person; and if it shall appear to the said court that it would be reasonable to make any special order touching the same, it shall be lawful for the court to do so, and to direct that such property as it may be expedient not to sell, or not to sell immediately according to the provisions of this act, shall not be so sold, and from time to time to order and direct in what manner such property shall be managed for the benefit of the creditors of such person, until the same can be properly sold, or until payment of all such creditors, according to the provisions of this act, shall have been made; or to make such orders touching the sale or disposition of such property as to the said court shall seem reasonable, considering the right of the creditors of such person to the payment of their demands, and the future benefit of such person after payment of his debts, and upon such terms and conditions with respect to the allowance of interest on debts not bearing interest, or other circumstances, as to the said court shall seem just; and if it should appear to the said court that the debts of such person can be discharged by means of money raised by way of mortgage on any property of such person, instead of raising the same by sale, it shall be lawful for the said court so to order, and to give all necessary directions for such purpose, and generally to direct all things which may be proper for the discharge of the debts of such person, in such manner as may be most consistent with the interests of such person in any surplus of his or her effects after the payment of such debts;" (sect. 48.)

*Discretion of
the court as to
the disposal of
property in
certain cases.*

*Property may
be mortgaged
if more
beneficial.*

It next enacts, that all powers vested in any such prisoner whose estate shall, by an order under this act, have been vested in the provisional assignee, which such prisoner might legally execute for his own benefit (except the right of nomination to any ecclesiastical benefice), shall be and are hereby vested in the assignee or assignees of the real and personal estate of such prisoner by virtue of this act, or to be by such assignee or assignees executed for the benefit of all or any of the creditors of such prisoner under this act, in such manner as such prisoner may have executed the same: (sect. 49.)

*Assignee may
execute powers
which the
insolvent might
have executed
for his own
benefit.*

With respect to the leasehold estates of insolvents, the section next immediately following (sect. 50) enacts, that in all cases in which any such prisoner shall be entitled to any lease, or agreement for a lease, and his assignee or assignees shall accept the same, and the benefit thereof, as part of the prisoner's estate and effects, the said prisoner shall not be deemed to be liable to pay any subsequent rent, nor be in any manner sued, after such acceptance, in respect or by reason of any subsequent non-observance or non-performance of the

*Where lease is
accepted by the
assignees, the
insolvent not
liable for the
rent or perform-
ance of future
covenants.*

No. XXVIII. the year , indorsed on the said hereinbefore lastly recited indenture, and made between the said (*insolvent*) of the one part, and the said (*mortgagee in fee*) of the other part, AFTER RECITING that the said sum of 1,500*l.* was then still due to the said (*mort-*

Conveyance in
Fee to Uses to
bar Dower by the
Assignees of
an Insolvent
Debtor, &c.

Assignees not
determining
whether to
accept the lease,
the lessor may
apply to the
court.

As to the
vesting of terms
of years in the
assignees.

Court may
direct
conveyance by
provisional
assignee where
no assignee is
appointed.

Any person not
being a trader,
or being a trader
owing less than
300*l.* on giving
and publishing
the required
notice, may
present a
petition to the
court of bank-
ruptcy, and
the judge or
commissioner
may thereupon
grant him
protection.

conditions, covenants, or ageements therein contained. And in case of the assignees not determining whether they will accept or decline the lease, the lessor may apply to the court, praying that such assignees may either so accept the same or deliver up such lease or agreement for a lease, and the possession of the demised premises; and the court shall thereupon make such order as in all the circumstances of the case shall seem meet and just; and such order shall be binding on all parties. This clause has been confirmed by the subsequent statute, 7 & 8 Vict. c. 96, s. 12.

In order to vest a term of years in the assignees under these statutes, it will be necessary for them to do some unequivocal act to manifest their acceptance: a mere attempt to make it available to the estate, is not such an exercise of ownership as to create an implication by consent: (*Paterson's Pract. Insol.* referring to *Lindsay v. Limbert*, 12 Moore, 209; S. C. 2 Car. & P. 526.) The assignees are also entitled to a reasonable time to determine whether they will accept or decline the lease: (*Ib.* and see *Doe d. Palmer v. Andrews*, 2 Car. & P. 593; S. C. 4 Bing. 348.) A forfeiture of a lease accruing on the lessee's insolvency, is waived by acceptance of rent from him after his final order: *Doe d. Gatehouse v. Rees*, 4 Bing. N. C. 384; S. C. 6 Scott, 161; and see *Topham v. Dent*, 4 Moo. & Pay. 246; 6 Bing 515.) As to the equity of redemption of leaseholds for years, see *Waldron v. Howell* (3 Russ. 376.)

The same statute also, after reciting that "it may often happen that some interest in lands or tenements has or may become vested in the provisional assignee which appears to be of no value to creditors, but nevertheless it may be reasonable and expedient that the provisional assignee should make or join in making some conveyance or assignment of the same, and that the same should be done without the expense attending advertisements and meetings of creditors as hereinbefore described in certain cases," enacts, that it shall be lawful for the said court, at any time after the day gazetted for the bringing up of any prisoner to be dealt with according to the provisions of this act, if no person or persons other than the provisional assignee shall have been appointed assignee or assignees of his estate and effects; and if it shall appear fit, upon such notice given by advertisement or otherwise to the creditors, or any of them, as the said court shall in any case direct, to order the said provisional assignee to make or join in making any conveyance or assignment of any such interest as to the said court may appear just and reasonable, without observing the provisions of this act, as to the sale of real property by the provisional or other assignees of the estates of insolvent debtors: (sect. 49.)

By a subsequent enactment (5 & 6 Vict. c. 116) any person not being a trader within the meaning of the bankrupt acts, or being such trader, but owing debts amounting in the whole to less than 300*l.* on giving notice to one-fourth in number and value of his creditors, and causing such notice to be inserted twice in the *London Gazette*, and twice in some newspaper circulating within the county where he resides, may present a petition for protection from process to the Court of Bankruptcy, if he has resided twelve calendar months in London, or within the London district, or to the Commissioner of Bankruptcy in the country, within whose district he may have resided twelve calendar months, which petition shall have annexed to it a full and true schedule of all debts owing by and to him, and thereupon the judge, or commissioner of the Court of Bankruptcy, is empowered to grant such protection until the appearance of the petition in court, as thereafter provided; and

gagee in fee), together with an arrear of interest amounting to the sum of 150*l.*, which it had been agreed should be secured by way of further charge on the said mortgaged premises, IT IS WITNESSED that the said (*insolvent*) did thereby further charge the said mortgaged premises, not only with the said principal sum of 1,500*l.* already secured thereon, and interest, but also with the said sum

No. XXVIII.

Conveyance in Fee to Uses to bar Incurred by the Assignees of an Insolvent Debtor, &c.

upon the presentation of such petition, all the estate and effects of the petitioner are forthwith vested in the official assignee.

By a subsequent section of the same statute (sect. 7) it is enacted, that after the passing of the final order, the whole estate, real and personal, present and future, of the petitioner, is to become absolutely vested in the official assignee and assignees chosen by the creditors, without any deed or conveyance, which assignees shall hold the same as fully as if the petitioner had been made a bankrupt, and they had been made assignees under his fiat; and as often as any such assignees shall die, or be lawfully removed, and a new assignee duly appointed, all estate real and personal, and such effects and credits as were vested in such deceased or removed assignee, shall vest in the new assignee, either alone or jointly with the existing assignees, as the case may require, without any deed or conveyance for that purpose: (sections 7, 9.) But with a proviso, that where any conveyance or assignment of any real or personal property of a petitioner would require to be registered, enrolled, or recorded, the certificate of the appointment of assignees shall be registered, enrolled, or recorded in the same place, and shall have the like effect as the registry or enrolment or recording of such conveyance or assignment would have had; and the title of any purchaser for valuable consideration to any such property, who shall duly have registered, enrolled, or recorded his purchase deed, previously to the registry thereby directed, shall not be invalidated by reason of the appointment of such assignee or assignees, or the vesting of such property in him or them, consequent thereupon, unless the certificate of such appointment shall be registered as aforesaid, within the times following (that is to say), as regards the United Kingdom of *Great Britain* and Ireland, within two months from the date of such appointment; and as regards all other places, within twelve months from the date thereof: (sect. 8.)

On passing of final order, estate of petitioner to be vested in his assignees.

By the recent statute, 10 & 11 Vict. c. 102, the Insolvent Debtors' Court in England is, with the county courts, to have jurisdiction in all matters of insolvency under the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, in the following manner:—

Jurisdiction of the county courts in cases of insolvency.

The Insolvent Debtors' Court is to have the jurisdiction in cases in which the insolvent has resided six calendar months next immediately preceding the time of filing his petition within any parish, the distance whereof, as measured by the nearest highway from the General Post Office in London to the parish church of such parish, shall not exceed twenty miles; and the county courts are to have jurisdiction in cases in which the insolvent has resided elsewhere than within the above-mentioned district of the Insolvent Court in London, and has also resided for six calendar months next immediately preceding the time for filing his petition within the district of such county court to which such insolvent shall prefer his petition.

When the Insolvent Debtors' Court is to have the jurisdiction, and when the county court.

But if the insolvent has not resided in any one place, then the jurisdiction is to be vested either in the Insolvent Debtors' Court in London, or in such one of the county courts as the said Insolvent Debtors' Court shall direct.

When insolvent has not resided in any one place, jurisdiction to be as Insolvent Debtors' Court shall direct.

In the Insolvent Debtors' Court, the provisional assignee, and in the county court the clerk, is to be and to act as the official assignee: (stat. 10 & 11 Vict. c. 102, s. 5; and see Paterson's Pract. Insol. 2, 3, 33.)

Who are to be the provisional assignees.

No. XXVIII. of 150*l.* then due, together with interest for the same at the rate of 5*l.* for every 100*l.* by the year.(*b*)

*Conveyance in
Fee to Uses to
bar Dower by the
Assignees of
an Insolvent
Debtor, &c.*

3. AND WHEREAS by virtue of an Act of Parliament passed in the fifth and sixth years of the reign of Her Majesty Queen

Of insolvent's
petition, and
appointment of
official assignee.

(*b*) If the insolvent is in prison, substitute for the two following clauses the two recitals, A. and B. below.

Recital that
insolvent has
petitioned the
court under the
provisions
of statute
1 & 2 Vict.
c. 110.

A. AND WHEREAS by virtue of an act of Parliament passed in the second year of the reign of Her Majesty Queen Victoria, intituled "An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England, the said (*insolvent*) being then in custody on final process for debt,* [applied by petition to the Court for the Relief of Insolvent Debtors, praying to be discharged under the provisions of the said act], and by an order of the said court, duly entered of record, and advertised in pursuance of the said act, the said hereditaments and premises hereinafter described, and which are intended to be hereby granted and released, together with other lands and hereditaments of the said (*insolvent*), became vested in the said (*provisional assignee*), as the provisional assignee for the time being of the estate and effects of insolvent debtors in England.

Of the
appointment of
creditors'
assignees.

B. AND WHEREAS by another order of the said court, dated the day of the said (*assignee*) was duly appointed assignee of the estate and effects of the said (*insolvent*), and accepted of such appointment, which was duly entered of record of the said court, and advertised according to the provisions of the said act.

* If the petition was by the insolvent's execution creditor, substitute for the words within brackets above—

"the creditor at whose suit the said (*insolvent*) was so charged in execution as aforesaid, applied by petition to the Court for the Relief of Insolvent Debtors, for an order for vesting the estate and effects of the said (*insolvent*) in the provisional assignee of the estate and effects of insolvent debtors in England, in pursuance of the provisions of the said act."

Victoria, intituled "An Act for the Relief of Insolvent Debtors in England," the said (*insolvent*), not being a trader, in pursuance of a notice for that purpose duly given by him to one-fourth in number and value of his creditors, and inserted twice in the *London Gazette*, and twice in the (*insert title of the provincial newspaper*) circulated within the county of D—— (wherein he then resided), presented his petition for protection from process, with a proper schedule thereunto annexed, to (*commissioner of bankrupts, or judge of county courts, as the case may be*), for the district of——, within which district the said (*insolvent*) had resided twelve calendar months; whereupon (*official assignee*) was appointed by the said (*commissioner, or judge*) to be the official assignee of the estate and effects of the said (*insolvent*.)

No. XXVIII.

Conveyance in Fee to Uses to bar Doer by the Assignees of an Insolvent Debtor, &c.

Of insolvent's petition, and appointment of official assignee.

4. AND WHEREAS by another order in writing, made and signed by the said (*commissioner, or judge*), dated the day of , for the protection of the person of the said (*insolvent*) from all process, and for the vesting of his estate and effects in the said (*official assignee*), together with the said (*creditors' assignee*), who was duly chosen an assignee by a majority in number and value of the creditors of the said (*insolvent*), who attended before the said (*commissioner, or judge*) on the said day of .

Of order for protection of insolvent, and of appointment of creditors' assignee.

5. AND WHEREAS the said (*creditors' assignee*) convened a meeting of the creditors of the said (*insolvent*) on the day of at (*insert appointed place of meeting*) by a previous notice inserted in the *London Gazette*, and the provincial newspaper, called (*describe title of newspaper*), circulated within the said county of D——, and in the neighbourhood in which the said (*insolvent*) resided (c) [previously to, and at the time of presenting his said petition], which notice duly appeared in the said *Gazette* and newspaper respectively, on the day of , at which time and place the major part in value of the creditors of the said (*insolvent*), at such meeting assembled, by writing under their

That assignee had convened a meeting of the creditors, who had resolved to sell the insolvent's real estate.

(c) If the insolvent was imprisoned when he applied by petition, substitute for words within brackets—

"previously to his imprisonment."

No. XXVIII. hands, resolved that the real estate of the said (*insolvent*) should be sold by public auction at _____ on the _____ day of _____ then next ensuing (being more than thirty days after the meeting of the said creditors), either together or in parcels, as the said (*assignee*) should in his discretion think proper.

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Fee to Uses to
bar Dower by
the Assignees of
an Insolvent
Debtor, &c.

That assignee
had put up the
premises for
sale, and that
purchaser had
been declared
the purchaser.

6. AND WHEREAS the said (*assignee*), in pursuance of the said hereinbefore recited resolution, and in obedience to and accordance with the provisions of the said act, caused the hereditaments and premises hereinafter described, together with other freehold and leasehold property of the said (*insolvent*), to be put up for sale at the time and place hereinbefore mentioned, in several lots, at which sale the said (*purchaser*), being the highest bidder, was declared the purchaser of lot I., being the hereditaments and premises hereinafter described, at the price or sum of 2,400*l*.

That principal
moneys and an
arrear of interest
is due to
mortgagee by
demise.

7. AND WHEREAS upon an account this day made up and stated, there appears to be now due and owing to the said (*mortgagee by demise*), for principal and interest on his said recited mortgage security, the sum of 575*l*.

That principal
moneys and an
arrear of interest
is due to
mortgagee in fee.

8. AND WHEREAS by another account this day also made up and stated, there appears to be now due and owing to the said (*mortgagee in fee*), for principal and interest upon his said recited mortgage security, the sum of 1,725*l*.

That insolvent
has agreed to
concur in
conveyance.

9. AND WHEREAS the said (*insolvent*), at the request of the said (*assignees*), hath agreed to concur in these presents, in manner hereinafter appearing.(*d*)

Testatum.

10. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of 575*l*.

Insolvent cannot be compelled to concur in conveyance. (*d*) The concurrence of the insolvent must, it seems, be a voluntary act, the assignees having no power to compel him to do so; nor will a purchaser be allowed to object to the title on account of his not being made a party to the conveyance. It is usual, however, for the insolvent to concur, but it is scarcely ever worth while to incumber the deed with his covenants for title, which can be of little, if any, value. The covenant for further assurance may, however, perhaps be so.

sterling, this day paid by the said (*purchaser*) to the said (*mortgagee by demise*), (with the privity and approbation of the said (*provisional assignee and creditors' assignee*), testified by their being parties hereto and concurring herein), the receipt of which the said (*mortgagee by demise*) doth hereby acknowledge, and also that the same is in full satisfaction of all principal moneys and interest owing to him upon his said hereinbefore recited mortgage security, and therefrom doth release and for ever discharge the said (*purchaser*), his heirs, executors, and administrators, and also the said (*insolvent*), his heirs, executors, administrators, and assigns, and also the said mortgaged premises; ALSO in consideration of the further sum of 1,725*l.* sterling, at the same time as aforesaid paid by the said (*purchaser*) to the said (*mortgagee in fee*), (with the privity and approbation of the said (*assignees*), testified as aforesaid), the receipt of which the said (*mortgagee in fee*) doth hereby acknowledge, and also that the same is in full satisfaction of all principal moneys and interest owing to him upon his said hereinbefore recited mortgage securities, and therefrom doth release and for ever discharge the said (*purchaser*), his heirs, executors and administrators, and also the said (*insolvent*), his heirs, executors, administrators, and assigns, and also the said mortgaged premises; AND ALSO in consideration of the further sum of 100*l.* sterling, at the same time as aforesaid paid by the said (*purchaser*) to the said (*official assignee*); the receipt and payment in manner aforesaid of which several sums of 575*l.*, 1,725*l.*, and 100*l.*, making together the sum of 2,400*l.*,^(e) the purchase-money of the said hereditaments and premises, the said (*official assignee and creditors' assignee*) do hereby acknowledge, and therefrom do release and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; AND ALSO in consideration of the further sum of 10*s.* sterling, at the same time as aforesaid paid by the said (*purchaser*) to the said (*insolvent*), the receipt whereof is hereby acknowledged; HE the said (*mortgagee in fee*) (at the request and by the direction of the said (*assignees*), testified as aforesaid), DOTH by these presents grant and release: the said (*assignees*), as such assignees as aforesaid, DO and each of them DOTH by these presents release and convey; the said (*mortgagee*),

No. XXVIII.

Conveyance in
Fee to Uses to
bar Dower by
the Assignees of
an Insolvent
Debtor, &c.

(e) An *ad valorem* stamp adapted to the above amount will be required: (see ante, p. 108, 112.) The progressive duty will be 10*s.*

No. XXVIII. *by demise*), for the purpose of merging the said term of 1,000 years (at the request and by the direction as well of the said (*purchaser*) as of the said (*assignees and insolvent*), testified as *Conveyance in Fee to Uses to bar Dower by the Assignees of an Insolvent Debtor, &c.* aforesaid), DOTH by these presents assign, surrender and yield up, and the said (*insolvent*) DOTH by these presents ratify and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*; INSERT *general words*; *all-estate clause*; *all-deeds clause*; ALSO *habendum to dower uses, and declaration to bar dower, ut ante*, No. I., clauses 5 to 7 inclusive, pp. 46—48. *Covenants for title from the insolvent may also be inserted, ut ante*, No. III., clauses 4, 5, 6, *ante*, p. 56.]

Covenant from mortgagees and assignees that they have done no act to incumber.

11. AND the said (*mortgagee by demise*), (*mortgagee in fee*), (*official assignee*) and (*creditors' assignee*), for themselves respectively, but each for his own acts, deeds, and defaults only, doth hereby covenant with the said (*purchaser*), his heirs and assigns, that they the said (*mortgagee by demise*), (*mortgagee in fee*), (*official assignee*), and (*creditors' assignee*) respectively, have not done, committed, permitted, or willingly or knowingly suffered, or been party or privy to any act, deed, matter or thing whatsoever, whereby, or by reason or means whereof the said hereditaments and premises hereby granted and released, or any part thereof, are, is, can, shall or may be incumbered.

IN WITNESS, &c.

No. XXIX.

CONVEYANCE BY THE HEIR AND EXECUTORS OF A VENDOR
WHO DIES PENDING THE CONTRACT. VARIATION WHERE
HE DIES INTESTATE.

- | | |
|---|--|
| <p>1. Parties.</p> <p>2. Recital of agreement between ancestor and purchaser.</p> <p>3. Of death of ancestor, leaving heir surviving him ; his will appointing executors ; and the probate thereof.</p> | <p>4. Testatum by which heir conveys, and personal representatives release and confirm.</p> <p>5. Covenant from heir and executors that they have done no act to incumber.</p> |
|---|--|

1. THIS INDENTURE, made the day of A.D., 185 , Parties.
BETWEEN (*heir*) of, &c. (eldest son and heir-at-law of (*ancestor*
vendor), of, &c., Esquire), of the first part, (*executors*), of, &c.
(executors of the last will and testament of the said (*ancestor*),) of
the second part, (*purchaser*), of, &c., of the third part, and (*purchaser's dower trustee*), of, &c., of the fourth part.

2. WHEREAS by articles of agreement in writing, bearing date Recital of
on or about the day of , and made and entered into agreement be-
between the said (*ancestor*) of the one part, and the said (*purchaser*) and purchaser.
(*purchaser*) of the other part, the said (*ancestor*) contracted to sell the
hereditaments and premises hereinafter described, and the fee-
simple and inheritance thereof, free from all incumbrances, to the
said (*purchaser*) for the sum of 1;500*l*.

3. AND WHEREAS the said (*ancestor*) died on or about the Of death of
day of , leaving the said (*heir*), his eldest son and heir-at- ancestor, leaving
law, him surviving : [having by his will, duly executed and him; his will
attested as by law is required, appointed the said (*executors*) joint appointing
executors; and

No. XXIX.
 ———
*Conveyance
 by the Heir and
 Executors of
 a Vendor who
 dies pending
 the Contract,
 &c.*

the probate
 thereof.

Testatum by
 which heir
 conveys, and
 personal repre-
 sentatives
 release and
 confirm.

executors of his said will, who duly proved the same in the Pre-
 rogative Court of the Archbishop of Canterbury on the day
 of last.] (a)

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of
 the said recited contract, and in consideration of the sum of 1,500*l.*
 sterling, paid by the said (*purchaser*) to the said (*executors*) (b) on
 the execution hereof, the receipt of which the said (*executors*)
 hereby acknowledge, and of and from the same and every part
 thereof do by these presents acquit, release, exonerate and for
 ever discharge the said (*purchaser*), his heirs, executors, adminis-
 trators and assigns; and also in consideration of the sum of five
 shillings, at the same time as aforesaid paid by the said (*purchaser*)
 to the said (*heir*), the receipt of which is hereby acknowledged,
 the said (*heir*) (in respect only of such estate as is vested in
 him as such heir-at-law of the said (*ancestor*) deceased, as
 aforesaid, but not further or otherwise, and at the request and
 by the direction of the said (*executors*), testified by their being
 parties hereto), DOTH by these presents grant, release and con-
 vey, and the said (*executors*) DO by these presents release, ratify
 and confirm, unto the said (*purchaser*) and his heirs, ALL [DESCRIBE
parcels; INSERT *general words*; *all-estate clause*; *all-deeds*(c)

(a) In case the vendor dies intestate, substitute for words above, within
 brackets,—

That ancestor
 had died
 intestate, and
 letters of
 administration
 had been taken
 out.

“and intestate, whereupon letters of administration to his estate
 and effects were granted to the said (*administrator*) by the Pre-
 rogative Court of the Archbishop of Canterbury, on the day
 of last.”

Practical
 suggestions.

(b) If the vendor dies before the payment of the purchase-money, it will go
 to his executors, and form part of his personal assets; consequently the
 purchase-money must be paid to them, and be so expressed in the deed of con-
 veyance: (*Sikes v. Lister*, 5 Vin. Abr. 541, pl. 28; *Baden v. Earl of Pembroke*,
 2 Vern. 213; *Bubb's case*, 2 Freem. 38; *Smith v. Hibberd*, 2 Dick. 712; *Foley*
v. Percival, 4 Bro. C. C. 419; and see *Gilb. Lex Prætor*, 243; see also *Eaton*
v. Sanxter, 6 Sim. 517.)

(c) If the heir retains property of greater value to which the title deeds
 relate, the all-deeds clause should be omitted here, and the recital that the title
 deeds are retained by the heir, and the covenant for their production, *ut ante*,
 No. V., clauses 8, 9, pp. 61 to 63, should be inserted at the end, after the covenant
 against incumbrances.

clause ; *habendum to uses to bar dower, and declaration to bar dower ; ut ante*, No. I., clauses 5, 6, 7, pp. 46 to 48.] No. XXIX.

5. AND the said (*heir*) and (*executors*), but each for his own acts only, do hereby for themselves, and their respective heirs, executors and administrators, severally covenant, promise and agree, with and to the said (*purchaser*), his heirs and assigns, that neither they the said (*heir*) and (*executors*) respectively, nor with their privy hath the said (*ancestor*), deceased, done or permitted, or been party or privy to, any act, deed, matter or thing whatsoever, whereby, or by reason or means whereof, the said hereditaments and premises hereby granted and released, or any part of the same, are, is, can, shall or may be impeached, charged, incumbered, or prejudicially affected in any manner howsoever. (*d*)

Conveyances by the Heir and Executors of a Vendor who dies pending the Contract, &c.

Covenant from heir and executors that they have done no act to incumber.

IN WITNESS, &c.

(*d*) As the heir derives no benefit from this assurance by which he conveys the property of which he has been disinherited, it is hardly fair to call upon him to enter into covenants for title. If, however, he is willing to do so, clauses 8, 9 and 10, in form No. I, *ante*, pp. 48 to 51, will be found to answer the purpose, and in such case the above covenant against incumbrances should be altogether omitted. Practical observations.

No. XXX.

CONVEYANCE TO A PURCHASER IN FEE WHERE THE PURCHASE-MONEY IS TO BE PAID BY INSTALMENTS. (a)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of agreement to sell, and that part of the purchase-moneys shall be paid by instalments. 3. Testatum. 4. Habendum to purchaser in fee. 5. To the use of vendor's trustee for 1,000 years, and subject thereto, to uses for the benefit of purchaser. 6. Further testatum, by which purchaser covenants to pay the remainder of the purchase-money by six equal instalments. 7. Trustee of 1,000 years term, in case of default in payment of the instalments, to raise the same by sale or mortgage. | <ol style="list-style-type: none"> 8. Indemnity to purchasers. 9. Sum secured to be limited to 2,000<i>l</i>. 10. Declaration and agreement that title deeds are to be deposited in the hands of vendor's trustee until all the instalments are paid. 11. In case premises are sold or mortgaged under trusts of the deed, trustee is to deliver title deeds to purchaser or mortgagee. |
|---|---|

Substituted Clause.

- A. Covenant from purchaser, in case of default in payment, to execute a mortgage in fee to vendor upon request.

Parties.

1. THIS INDENTURE, made the day of A.D., 185 ,
 BETWEEN (*vendor*), of &c., of the first part; (*purchaser*), of
 &c., of the second part; and (*vendor's trustee*), of &c., of the
 third part. (b)

(a) It is apprehended that this assurance must be stamped both as a purchase deed and a mortgage; so that an *ad valorem* stamp on the 2,000*l*. purchase-money, and also on the 2,000*l*., being the limit of amount secured by the deed will be necessary.

Practical
observations.

(b) If the property is intended to be limited to dower uses for the purchaser's benefit, his dower trustee must be the party to the conveyance of the third part.

2. WHEREAS the said (*vendor*) has contracted with the said (*purchaser*) to sell to him the hereditaments and premises hereinafter described, and the fee-simple and inheritance thereof in possession, free from all incumbrances, for the sum of 2,000*l.*, to be paid by the several instalments and in manner hereinafter appearing.

No. XXX.

Conveyance
to a Purchaser
in Fee, where
the Purchase-
Money is to be
paid by
Instalments.

3. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of 500*l.* sterling, part of the said purchase-money or sum of 2,000*l.*, paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom DOTH, by these presents, release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; AND ALSO in consideration of the sum of 1,500*l.*, the remaining part of the said purchase-money or sum of 2,000*l.*, so covenanted and agreed to be paid to the said (*vendor*) at the several times and by the several instalments, and secured to him in manner hereinafter mentioned, (c) HE the said (*vendor*)

Recital of
agreement to
sell, and that
part of the
purchase-
moneys shall
be paid by
instalments.
Testatum.

(c) Independently of any express agreement to that effect, the vendor who delivers possession of the estate has always a lien upon it for the whole or such part of the purchase-money as remains unpaid (*Herle v. Botelers*, Cary's Cha. ; Rep. 25 ; *Chapman v. Tanner*, 1 Vern. 267 ; *Gibbons v. Baddall*, 2 Eq. Ca. Abr. 682 ; *Coppin v. Coppin*, 2 P. Wms. 294 ; *Fawell v. Heelis*, Amb. 724 ; *Hennand v. Moore*, 1 Eden. 237 ; *Walker v. Presturch*, 2 Ves. 622 ; *Maccreth v. Symmons*, 15 Ves. 129 ; *Selby v. Selby*, 4 Russ. 336 ; *Ryle v. Haggie*, 1 Jac. Walk. 234 ; see also Cross on Lien, 38 ; *Winter v. Lord Anson*, 3 Russ. 488 ; and see 1 Fonbl. Eq. 155 (n. c.) ; *ib.* 381 (n. k.)) not only as against the vendor himself and his representatives, and all persons claiming as volunteers under him, but even against purchasers for valuable consideration, where it can be shown that the latter had notice that the money was unpaid (*Hennand v. Moore*, *sup.*) ; but it will be otherwise in the case of purchaser, or other incumbrancers without notice ; as in that case their estate under the purchase, will supersede the vendor's lien upon the lands : (*Cator v. Earl of Pembroke*, 1 Bro. C. C. 301.) Still, to have this operation, the estate must be actually conveyed, for between equal equities the rule is, "*qui prior est tempore potior est jure* ;" consequently, a subsequent incumbrancer, who has not obtained the legal estate, cannot postpone the vendor's lien : (*Ex parte Wright*, Mont. & Ayr. 49 ; Cross on Lien, 100.) A rule which extends equally to sales of copyhold as to those of freehold estates : (*Winter v. Lord Anson*, 1 Sim. & Stu. 434 ; 3 Russ. 488.) As between the immediate vendor and the vendee, it will make no difference as to the lien of the former, whether the estate be sold, or only contracted for, as the lien will attach equally in either instance, and this, notwithstanding the full consideration is expressed to be paid in the body of the deed, and the receipt is duly indorsed, signed and witnessed : (*Coppin v. Coppin*, 2 P. Wms. 284 ; *Maccreth v. Symmons*, 15 Ves. 337 ; see the cases cited *supra*, and see also *Pollexfen v. Moore*, 3 Atk. 274 ; *Charles v. Andrews*, 9 Mod. 152.)

Of the vendor's
equitable lien
for his unpaid
purchase-
money.

To create a lien,
the estate must
be actually
conveyed.

This lien of the vendor on the purchased lands will, however, be destroyed, if he takes a distinct and independent security for his purchase-money, as a mort-

How vendor's
lien may be
destroyed.

No. XXX. DOTH, by these presents, grant, release, and confirm unto the said
Conveyance (purchaser) and his heirs, ALL [HERE DESCRIBE *parcels*; INSERT
to a Purchaser *general words*; *all-estate clause*; and *all-deeds clause* (d); *ut ante*,
in Fee, where No. I., clause 5, pp. 45 to 46.]
the Purchase
Money is to be
paid by
Instalments.

Habendum to
 purchaser in
 fee.

4. TO HAVE AND TO HOLD the said messuage or tenement,
 piece or parcel of land, buildings, and all and singular other the
 hereditaments and premises hereinbefore described, and hereby
 granted and released, with their appurtenances, unto the said
 (purchaser) and his heirs.

To the use of
 vendor's trustee
 for 1,000 years,
 and subject
 thereto, to uses
 for the benefit
 of purchaser.

5. TO THE USES, upon the trusts, and for the ends, intents,
 and purposes hereinafter declared (that is to say), TO THE USE
 of the said (*vendor's trustee*), his executors, administrators, and
 assigns, from henceforth, for the term of 1,000 years, without
 impeachment of waste, upon the trusts, and for the ends, intents
 and purposes, hereinafter declared; and after the expiration
 or sooner determination of the said term, and in the meantime

gage of a portion of the lands sold (*Bond v. Kent*, 2 Vern. 281; *Capper v. Spottiswoode*, Taunt. 21), or of another estate (*Nairn v. Prowse*, 6 Ves. 752); either of such acts being sufficient to rebut the presumption of his equitable lien, or rather, affording evidence of his having altogether abandoned it for a security of another kind; but it will be otherwise where the security taken is merely a personal one, as a bond (*Winter v. Lord Anson*, 3 Russ. 488, on appeal, reversing *Winter v. Lord Anson*, 1 Sim. & Stu. 434, where it was held that the bond had destroyed the lien), promissory note, bill of exchange, or the like, in either of which cases his lien will remain as long as those securities are unpaid: (*Herle v. Botelers*, Cary's Cha. Rep. 35; *Gibbons v. Baddall*, 2 Eq. Ca. Abr. 682 (n); *Grant v. Mills*, 2 Ves. & Bea. 806; *Saunders v. Leslie*, 2 Ball. & B. 515; *Ex parte Loaring*, 2 Rose, 59; *Hughes v. Kearney*, 1 Sch. & Lef. 132; *Blackburn v. Gregson*, 1 Cox, 90; *Lynn v. Chaters*, 2 Kee. 521), even though the vendee become bankrupt: (*Ex parte Peake*, 1 Mad. 346.) But a pledge of stock in the funds seems to form an exception to this rule, it having been determined that a pledge of that kind will discharge the vendor's lien: (*Nairn v. Prowse*, 6 Ves. 752.) And if a purchaser borrows part of the purchase-money and pays it to the vendor, leaving the rest unpaid, and the conveyance is made to such purchaser, stating the transaction, and giving thereunder security to the lender, the concurrence of the vendor will preclude him from any claim to lien for the remainder of the purchase-money; if not against the purchaser, certainly against the mortgagee: (*Cood v. Pollard*, 9 Price, 544; 10 ib. 109, *sub nom.* *Cood v. Cood*.)

Practical
 suggestions.

(d) It will be proper to insert the grant of all deeds to the purchaser, but these should, in a case circumstanced like the present, be immediately handed over to the trustee of the term, and be retained by him until the instalments are paid off, and an agreement to that effect should be contained in the present deed, as in clause 10, *infra*.

subject thereto [INSERT HERE *limitations to uses to purchaser* : If he is to take under limitations to uses to bar dower, INSERT the same limitations, *ut ante*, No. I., clause 6, p. 46. If simply in fee, INSERT "unto and to the use of the said (*purchaser*), his heirs and assigns for ever;" and then add to either of the above clauses, the declaration to debar widow of dower, *ut ante*, No. I., clause 7, p. 48.]

No. XXX.

Conveyance to a Purchaser in Fee, where the Purchase Money is to be paid by Instalments.

6. AND THIS INDENTURE FURTHER WITNESSETH, and it is hereby mutually declared and agreed by and between the said parties hereto, and particularly the said (*purchaser*), doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said (*vendor*), his executors, administrators, and assigns, that he the said (*purchaser*), his heirs, executors or administrators, shall and will punctually and truly pay or cause to be paid unto the said (*vendor*), his executors, administrators or assigns, the residue of the said purchase-money or sum of 1,500*l.* by six equal payments or instalments of 250*l.*, to be paid by equal quarterly payments on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, until the whole of the said purchase-moneys shall be satisfied, and this without any deduction or abatement on any account or pretence whatsoever; the first quarterly instalment to be made on the day of next. (*e*)

Further testament, by which purchaser covenants to pay the remainder of the purchase-money by six equal instalments.

(*e*) It is sometimes arranged that the purchaser is to covenant to execute a mortgage to the vendor as a security in case of default; in which case, the following clause must be substituted for clauses 7 to 11 inclusive :—

A. "AND ALSO, that in case default shall be made in payment of any of the said instalments, or any of them, or any part of the same, at the several days and times hereinbefore appointed for payment thereof, then and in such case the said (*purchaser*), his heirs or assigns, shall and will forthwith, at the request of the said (*vendor*), his executors, or administrators, but at the costs of the said (*purchaser*), his heirs, executors, administrators or assigns, and upon the same being tendered to him for that purpose, execute a proper conveyance of the fee-simple and inheritance of the said hereditaments and premises, for securing unto the said (*vendor*), his executors, administrators and assigns, so much of the unpaid purchase-moneys as shall be then owing to him, together with interest for the same, at the rate of 5*l.* for every 100*l.* by the year, from the time

Covenant from purchaser, in case of default in payment, to execute a mortgage in fee to vendor, upon request.

No. XXX.

Conveyance
to a Purchaser
in Fee, where
the Purchase-
Money is to be
paid by
Instalments.

Trustee of
1,000 years'
term, in case of
default in pay-
ment of the
instalments, to
raise the same
by sale or
mortgage.

7. AND AS TO, FOR AND CONCERNING the said term of 1,000 years, so limited to the said (*vendor's trustee*) as aforesaid, it is by these presents declared to be so limited, UPON TRUST that if any quarterly instalment of the said sum of 1,500*l.*, or any part thereof, shall be in arrear and unpaid for the space of fourteen days next after any of the days appointed for payment of the same, in manner hereinbefore mentioned, and in breach of the covenant to that effect hereinbefore contained, *then*, and in such case, the said (*trustee*), his executors, administrators or assigns, shall, by and out of the rents, issues and profits of the said hereditaments and premises, or by demising, selling or mortgaging the same or a competent part thereof, for all or any part of the said term of 1,000 years, or by bringing actions against the tenants or occupiers of the said premises, or any of them, for the rents then in arrear, or by such other ways as shall be deemed expedient, raise and levy such sum and sums of money as shall be sufficient from time to time to pay and satisfy such instalments of the said purchase-moneys, or so much of the same as shall from time to time happen to be in arrear; TOGETHER with all such costs, charges and expenses as the said (*vendor*), his executors or administrators, or the said (*vendor's trustee*), his executors, administrators or assigns, shall pay or sustain, on account of the non-payment of such

at which such default in payment as aforesaid shall be made; which said mortgage assurance shall contain a proviso for redemption, on payment by the said (*purchaser*), his executors, administrators or assigns, to the said (*vendor*), his executors, administrators or assigns, of the principal moneys and interest, at the expiration of six calendar months from the day of the date of the said mortgage-deed, with immediate powers of sale in default of payment, and with such usual covenants on the part of the said (*purchaser*), his heirs or assigns, as a mortgagee is entitled to require; AND ALSO with a covenant on the part of the said (*vendor*), that the power of sale therein contained shall not be carried into effect without giving six calendar months' previous notice thereof, in writing, to the said (*purchaser*), his heirs, or assigns, but with a proviso, that the want of giving such notice is not to prejudice purchasers buying under such power of sale.

instalment or instalments, at the days and times and in manner hereinbefore appointed for payment thereof; and do and shall pay and apply the moneys so to be levied and raised as aforesaid in and towards payment and satisfaction thereof accordingly. AND SUBJECT and without prejudice to the aforesaid trusts, do and shall stand and be possessed of the said hereditaments and premises for the residue of the said term of 1,000 years, or so much of the same as shall not be disposed of for the purposes aforesaid, UPON TRUST for the said (*purchaser*), his heirs and assigns. (*f*)

No. XXX.

Conveyance
to a Purchaser
in Fee, where
the Purchase-
Money is to be
paid by
Instalments.

8. AND it is hereby declared, that the receipt or receipts in writing of the said (*vendor's trustee*), his executors, administrators or assigns, shall be a sufficient discharge for any sums of money that shall come to his or their hands by virtue of these presents, and shall effectually exonerate the person or persons paying the same from all responsibility with respect to the application thereof.

Indemnity to
purchasers.

9. PROVIDED ALWAYS, that the entire principal sum to be secured or recoverable by these presents shall not exceed the sum of 2,000*l.* (*g*)

Sum secured to
be limited to
2,000*l.*

10. AND IT IS HEREBY MUTUALLY DECLARED AND AGREED by and between the said parties to these presents, that all deeds, evidences and writings relating to the title of the said hereditaments and premises, and so granted unto the said (*purchaser*) and his heirs as aforesaid, shall immediately upon the execution of these presents be delivered into the hands of the said (*vendor's trustee*),

Declaration and
agreement that
title deeds are
to be deposited
in the hands of
vendor's trustee
until all the
instalments are
paid.

(*f*) It is unnecessary to insert a proviso for the cesser of the term, as now, by the stat. 8 & 9 Vict. c. 112, all terms are made to cease after the purposes for which they are created are satisfied: (See 1 Hughes Pract. Sales, 562, 563, 2nd edit.)

Practical
observations.

(*g*) It was formerly necessary to restrict the amount to be secured to some specified sum; otherwise, the limit being uncertain, the deed would have required the highest rate of stamp duty for which a mortgage could be made liable: (*Halse v. Peters*, 2 B. & Adol. 807.) But now, under the recent stamp act, 13 & 14 Vict. c. 97, if the total amount of the money to be secured shall be uncertain and without any limit, the same shall be available as a security for such an amount only as the *ad valorem* duty denoted on the stamp thereon will extend to cover: (See Hughes on Stamps, 86.) If, therefore, brevity is desirable, the above clause, although formerly essential, may now be safely omitted.

Recent
alterations in
the stamp laws
upon mortgage
securities of
uncertain
amount.

No. XXX.

*Conveyance
to a Purchaser
in Fee, where
the Purchase-
Money is to be
paid by
Instalments.*

and be retained by him, his executors, administrators, and assigns, until the whole of the remainder of the said purchase-money or sum of 1,500*l.* shall be fully paid and satisfied to the said (*vendor*), as also all such costs as may be incurred by reason of the non-payment thereof, or of any part thereof; and after such payment and satisfaction, that the said (*vendor's trustee*), his executors, administrators or assigns, shall and will redeliver the said deeds, evidences and writings unto the said (*purchaser*), his heirs, or assigns, or unto such person or persons as he or they shall direct or appoint.

In case premises
are sold or
mortgaged
under trusts of
the deed,
trustee is to
deliver over
deeds to
purchaser or
mortgagee.

11. PROVIDED ALSO, and it is hereby also further declared and agreed, that in case the said hereditaments and premises shall be sold or mortgaged for all or any part of the said term of 1,000 years, under or by virtue of the trusts herein declared, that then and in such case it shall be lawful for the said (*vendor's trustee*), his executors, administrators, or assigns, to deliver over all the said deeds, evidences and writings which shall relate to the title of the said hereditaments and premises so sold or mortgaged unto the purchaser or purchasers, mortgagee or mortgagees thereof in pursuance of the aforesaid trusts, and for the ends, intents, and purposes expressed and declared by these presents. [ADD *qualified covenants for title from vendor, ut ante*, No. I., clauses 8, 9, 10, pp. 48 to 51.]

IN WITNESS, &c.

No. XXXI.

CONVEYANCE IN FEE BY MORTGAGEE AND MORTGAGOR
TO A PURCHASER OF A PORTION OF THE MORTGAGED
PREMISES, THE MORTGAGEE COVENANTING FOR THE
PRODUCTION OF THE TITLE DEEDS.

- | | |
|---|--|
| <p>1. Parties.</p> <p>2. That principal money is still due, and also some arrear of interest.</p> <p>3. Of contract to sell, and of agreement by mortgagee to concur in conveyance.</p> <p>4. Testatum.</p> | <p>5. Habendum to purchaser in fee.</p> <p>6. Recital that title deeds relate to other premises comprised in mortgage.</p> <p>7. Covenant from mortgagee to produce title deeds.</p> |
|---|--|

1. THIS INDENTURE, made the day of A.D., 18 , Parties.
BETWEEN (*mortgagee*), of &c., of the first part; (*mortgagor*), of
&c., of the second part; and (*purchaser*), of &c., of the third part.
[RECITE *mortgage in fee, ut ante*, No. XVIII.. clause 2, p. 108,
but stating the amount secured to be 3,000l.]

2. AND WHEREAS the said principal sum of 3,000l. is still owing
to the said (*mortgagee*) upon his said recited mortgage security,
and also some arrear of interest.

That principal
money is still
due, and also
some arrear of
interest.

3. AND WHEREAS the said (*mortgagor*) having contracted to
sell the said hereditaments and premises hereinafter described, and
the fee simple and inheritance thereof, free from incumbrances,
to the said (*purchaser*), for the sum of 1,000l., the said (*mortgagee*)
hath agreed to concur in the conveyance of the same, on receiving
the said sum of 1,000l. in part liquidation of his said mortgage
debt.

Of contract to
sell, and of
agreement by
mortgagee to
concur in
conveyance.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of
the said recited contract, and in consideration of the sum of 1,000l.

Testatum.

No. XXXI. sterling, this day paid by the said (*purchaser*) to the said (*mort-
gagee*), (at the request and by the direction of the said (*mortgagor*),
Conveyance in testified by his being a party hereto), the receipt of which—and
Fee by that the same is in full satisfaction and discharge of all claims
Mortgagee and upon the said hereditaments and premises intended to be hereby
Mortgagor to granted and released in respect of his said hereinbefore recited
a Purchaser of mortgage security, the said (*mortgagee*) doth hereby acknowledge,
a portion of the and therefrom doth by these presents release, exonerate and for
the Mortgaged ever discharge the said (*purchaser*), his heirs, executors, adminis-
premises, the trators and assigns; AND ALSO in consideration of the sum of 5s. at
Mortgagee the same time as aforesaid paid by the said (*purchaser*) to the said
covenanting for (*mortgagor*), the receipt whereof is hereby acknowledged, HE the
the production said (*mortgagee*), (at the request and by the direction of the said
of the Title (*mortgagor*), testified as aforesaid), DOTH by these presents grant,
Deeds. release and convey, and the said (*mortgagor*) DOTH by these
presents release and confirm unto the said (*purchaser*) and his
heirs, ALL, &c. [DESCRIBE *parcels*], and all rights, members'
easements, privileges and appurtenances to the said hereditaments
and premises belonging, and all the estate, right, title and interest,
both legal and equitable, of them the said (*mortgagee*) and (*mort-
gagor*) therein.

Habendum to
purchaser in fee.

5. TO HAVE AND TO HOLD (*short general description*), and all
and singular other the hereditaments and premises hereinbefore
described, and hereby granted and released, with their appur-
tenances, unto the said (*purchaser*) and his heirs, TO THE USE of
the said (*purchaser*), his heirs and assigns for ever. [INSERT
declaration to debar widow of dower, ut ante, No. I., clause 7, p. 48.)
ADD *qualified covenants from mortgagor, that he has good right to
convey; for quiet enjoyment and freedom from incumbrances; and for
further assurance, ut ante, No. III., clauses 5, 6, 7. ALSO cove-
nant from mortgagee that he has done no act to incumber, No. XVII.,
clause 7, p. 107.*]

Recital that
title deeds relate
to other
premises com-
prised in
mortgage.

6. AND WHEREAS the title deeds and writings set forth in the
schedule hereunto annexed relate as well to the title of the here-
ditaments and premises hereby granted and released, as also to
other premises comprised in the said hereinbefore lastly recited
indenture of mortgage of greater value..

7. NOW THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, HE the said (*mortgagee*) DOTH hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that HE the said (*mortgagee*), his heirs or assigns, unless prevented by fire or other inevitable accident, will from time to time, and at any time, at the request and costs of the said (*purchaser*), his appointees, heirs or assigns, produce and show forth in England unto the said (*purchaser*), his appointees, heirs or assigns, or his or their attorney, solicitor, agent or counsel, or before any court or courts of law or equity, or upon any commission for the examination of witnesses, or otherwise as occasion shall require, the said deeds and writings in manifestation, defence and support of the title of the said (*purchaser*), his appointees, heirs or assigns, to the said hereditaments and premises; and at the like request and costs as aforesaid, grant true and attested or other copies, extracts or abstracts, and permit the same to be examined with the originals; PROVIDED ALWAYS, that in case the said hereinbefore recited mortgage shall be paid off, and the said (*mortgagee*), his heirs, executors, administrators or assigns shall procure every other person or persons to whom the said deeds and writings shall be delivered, to enter into a covenant with the said (*purchaser*), his heirs or assigns, to the effect of the covenant hereinbefore lastly contained, and shall cause the deed or deeds containing such covenant to be delivered to the said (*purchaser*), his heirs or assigns, THEN the covenant hereinbefore lastly contained on the part of the said (*mortgagee*), his heirs, executors and administrators, shall thenceforth cease and determine.

No. XXXI.

Conveyance
in Fee by
Mortgagee and
Mortgagor of a
Portion of the
Mortgaged
Premises.

Covenant from
mortgagee to
produce title
deeds.

IN WITNESS, &c.

No. XXXII.

CONVEYANCE BY HEIR IN TAIL OF ESTATES DEVISED BY
TENANT IN TAIL, THE HEIR ELECTING TO TAKE UNDER
THE WILL.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of will creating entail. 3. Of death of testator, and entry of first tenant in tail on premises. 4. Of fine levied by first tenant in tail, and conveyance by way of mortgage, which had been since paid off, and mortgaged premises reconveyed. 5. Of death of first tenant in tail, and entry of testator on premises. 6. That testator, under the erroneous supposition that he was seised in fee, had devised the entailed premises to trustees, and had | <p>devised other property to heir in tail.</p> <ol style="list-style-type: none"> 7. That testator having no testamentary power of disposition over the entailed property, heir in tail had been called upon to confirm the devise, or give up all claim under the will. 8. That heir in tail has elected to take under the will. 9. Testatum. 10. Habendum to trustees upon the trusts of the will. 11. Covenant from heir in tail that he has done no act to incumber. 12. And for further assurance. |
|--|---|

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*heir in tail*), of, &c., (*a*) of the one part, and (*trustees under will, by which tenant in tail has professed to devise the entailed lands*), of the other part.

Recital of will
creating entail.

2. WHEREAS A. B., late of, &c., deceased, by his last will,
dated the day of , devised the hereditaments and pre-
mises hereinafter described, and which are intended to be hereby

Practical
remarks.

(*a*) Issue in tail may be put to their election, where the entailed estates are devised, and they claim as legatees, or any other beneficial interest under the same will: (*Herne v. Herne*, 2 Vern. 555; and see 2 Ves. 14, 617; 1 Hughes Pract. Sales, 380, 2nd edit.)

granted and released unto (C. B.) and the heirs male of his body lawfully begotten, and in default of such issue, to his son (D. B.) and the heirs male of his body lawfully begotten, with divers remainders over.

No. XXXII.
 ———
*Conveyance
 by Heir in Tail
 of Estate
 devised by
 Tenant in Tail.*

3. AND WHEREAS the said (A. B.) died on or about the day of , without having altered or revoked his said will, whereupon the said (C. B.) entered upon the said hereditaments and premises, and became seised thereof as tenant in tail male general, by virtue of the limitations contained in the said hereinbefore recited will.

Of death of
 testator and
 entry of first
 tenant in tail.

4. AND WHEREAS by indenture of lease and release, bearing date respectively on or about the day of , and a fine, with proclamations, duly levied in pursuance thereof in Hilary Term then next following, the indenture of release being made between the said (C. B.) of the first part, (*trustee for mortgagee*) of the second part, and (*mortgagee*) of the third part, the said hereditaments and premises were conveyed and assured unto and to the use of the said (*mortgagee*), his heirs and assigns for ever; subject to a proviso for redemption and reconveyance, on payment of a certain sum of money therein mentioned, by the said (C. B.) to the said (*mortgagee*), at the time and in manner therein expressed, which said mortgage debt has long since been paid off and discharged, and the said hereditaments and premises duly reconveyed to the said (C. B.), his heirs and assigns.

Of fine levied by
 first tenant in
 tail, and convey-
 ance by way of
 mortgage, which
 had since been
 paid off, and
 mortgaged
 premises
 reconveyed.

5. AND WHEREAS the said (C. B.) died on or about the day of , in the year 18 , without issue, and intestate as to his real estate, whereupon the said (D. B.) entered into the possession, and also into the receipt of the rents and profits of the said hereditaments and premises.

Of death of first
 tenant in tail
 and entry of
 testator on
 premises.

6. AND WHEREAS the said (D. B.), under the erroneous supposition that the entail created by the said recited will had been effectually barred by the said hereinbefore recited indentures of lease and release, and the fine levied in pursuance thereof, and that the said hereditaments and premises had descended upon him as the heir at law of the said (C. B.) deceased, and not as tenant in

That testator,
 under the
 erroneous sup-
 position that he
 was seised in
 fee, had devised
 the entailed
 premises to
 trustees, and
 had devised

No. XXXII.
 ———
*Conveyance
 by Heir in Tail
 of Estate
 devised by
 Tenant in Tail.*

other property
 to the heir in
 tail.

tail under the limitations contained in the said recited will, (b) by his own last will dated on or about the day of , AFTER RECITING that he was seised in fee of the said hereditaments and premises, devised the same unto the said (*trustees*) and their heirs, TO HOLD to them, their heirs and assigns for ever, upon certain trusts in the now reciting will expressed and contained; AND the said (*testator*) also devised unto his eldest son, the said (*heir in tail*), certain other freehold and leasehold estates, and also the sum of 3,750*l.* Three per cent. Reduced Annuities, and after making certain other bequests, the said (*testator*) devised and bequeathed all the residue of his real and personal estate unto the said (*heir in tail*), his heirs, executors, administrators and assigns, absolutely and for ever, and appointed the said (*heir in tail*) and (*trustees*) joint executors of his said will; which, he dying on the day of without having altered or revoked, was duly proved by his said executors therein named, in the Prerogative Court of the Archbishop of Canterbury, on the day of last.

That testator
 having no
 testamentary
 power of dis-
 position over
 the entailed
 property, heir in
 tail had been
 called upon to
 confirm the
 devise, or give
 up all claim
 under the will.

7. AND WHEREAS the said fine so levied by the said (*C. D.*) as aforesaid, created a base fee only, which determined on failure of issue of his body; whereupon the said (*D. B.*) became seised of the said hereditaments and premises as tenant in tail male in possession under the limitations contained in the said first-recited will, and being as such tenant in tail incapable of devising the said premises, the said (*trustees*) (*c*) have called upon the said (*heir in*

Practical
 remarks.

(b) A very serious defect in titles was often incurred by barring an entail by a fine instead of a recovery; for the former mode of assurance created only a base fee, determinable on failure of issue of the body inheritable under the party levying the fine: (Shep. Touch. 27; Dy. 48; Cro. Car. 137; Co. Litt. 372; Bac. Abr., Fines E., Com. Dig. Estate, B. 22; 1 Hughes Pract. Sales, 171, 2nd edit.) And the same effect will be now produced, where there is a protector of a settlement, and the tenant in tail bars the entail without his consent. In the case above supposed, the testator had evidently no power of disposition by will, for the base fee had determined, and he was seised of an estate tail, over which he had no testamentary power of disposition so long as the entail remained unbarred. A case of this kind is by no means of singular occurrence, through the ignorance or culpable negligence of persons employed in barring entails, who, in order to save expense, adopted a fine which could only bar the estate tail of the party suffering it, instead of suffering a recovery, which would have barred the entail, and all remainders expectant thereon.

As to the
 application of
 the devised

(c) Where a person elects to take in opposition to the will, the interest given to him will be applied in compensation of the disappointed devisees: (Gillb. Eq. Rep. 15; *Ward v. Baugh*, 4 Ves. 627.) But the estate thus taken in

tail) to elect either to confirm such devise by conveying the same premises in manner hereinafter mentioned, or to forego all benefit under the said last-mentioned will.

No. XXXII.

Conveyance
by Heir in Tail
of Estate
devised by
Tenant in Tail

8. AND WHEREAS the said (*heir in tail*) hath elected to take under the said recited will of the said (*D. B.*), deceased, and hath also agreed to ratify and confirm all the dispositions therein contained in manner hereinafter appearing.

That heir in tail
has elected to
take under the
will.

9. NOW THIS INDENTURE WITNESSETH, that for the considerations hereinbefore expressed, and for the purpose of barring and destroying the estate tail of the said (*heir in tail*) in the hereditaments and premises hereinafter described, and all estates, rights, titles, interest and powers, to take effect after the determination or in defeasance of such estate tail, and to limit the same in manner hereinafter mentioned, HE the said (*heir in tail*) DOTH by these presents grant, release, ratify and confirm unto the said (*trustees*) and their heirs, ALL, &c. [DESCRIBE *parcels*, AND INSERT *general words*], and all rights, members and appurtenances, to the said hereditaments and premises belonging or appertaining; AND all the estate, right, title and interest, both legal and equitable, of him the said (*tenant in tail*) therein.

Testatum.

10. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*trustees*) and their heirs, freed and absolutely discharged from all estates tail of the said (*heir in tail*), and all estates, rights, titles, interests and powers, to take effect after the determination or in defeasance of such estates tail, TO

Habendum to
trustees upon
the trusts of the
will.

opposition to the will, of course vests in the party, with all the legal consequences attached to it. Hence, where the tenant in tail devised away the entailed lands, and gave the issue in tail, who was a married woman, and also her husband, other benefits by the will, she elected to take her estate tail in opposition to the will, but her husband of course took under the will. Then his wife died, and he entered as tenant by the curtesy, and it was contended, that as he took under the will, he could not claim in opposition to it; but it was held, that his wife took the estate with all its legal incidents, and that consequently he was entitled to be tenant by the curtesy in right of her seisin, although he claimed under the will in his own right: (*Lady Caran v. Pulleney*, 2 Ves. jun. 554; and see *Brodie v. Barry*, 2 Ves. & Bea. 127.)

property when
the devisee
elects to take in
opposition to the
will.

No. XXXII. *Conveyance by Heir in Tail of Estate devised by Tenant in Tail.* SUCH USES, upon such trusts, and for such ends, intents and purposes, and with, under, and subject to such powers, provisoes, charges, declarations and agreements, as are limited, expressed and declared, of and concerning the said hereditaments and premises, in and by the said hereinbefore recited will of the said (D. B.), deceased, or as near thereto as the death of parties or other circumstances will now permit, and to, for and upon no other use, trust, end, intent or purpose whatsoever.

Covenant from heir in tail that he has done no act to incumber.

11. AND the said (*heir in tail*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*trustees*), their heirs and assigns, that he the said (*heir in tail*) hath not done or permitted any act whereby the said hereditaments and premises hereby granted and released can be incumbered.

For further assurance.

12. AND ALSO, that the said (*heir in tail*), and all persons rightfully claiming any estate or interest in the said hereditaments and premises hereby granted and released, under or in trust for him, shall and will from time to time, and at all times hereafter, at the request and costs of the said (*trustees*), their heirs and assigns, make, do, acknowledge, enter into, execute and perfect, all such further and other lawful and reasonable acts, deeds, devices, conveyances and assurances in the law whatsoever, for the further, better, or more perfectly or satisfactorily granting, releasing, conveying, assuring and confirming the said hereditaments and premises hereby granted and released, with their appurtenances, unto the said (*trustees*), their heirs and assigns, to the uses and upon the trusts aforesaid; according to the true intent and meaning of these presents, as the said (*trustees*), their heirs or assigns, or their counsel in the law, shall require, and as shall be tendered to be done and executed.

IN WITNESS, &c.

No. XXXIII.

CONVEYANCE IN FEE BY TRUSTEES UNDER TRUSTS FOR SALE
IN A WILL TO A PURCHASER WHO IS BENEFICIALLY EN-
TITLED TO A PORTION OF THE PROCEEDS OF THE SALE.

1. Parties.

2. Recital of will devising premises to trustees upon trust to pay rents and profits to testator's wife for life or widowhood, and then to sell and divide the proceeds equally amongst such of his children as, being sons, shall attain twenty-one, or being daughters, shall attain that age or marry.

3. Of death of testator: probate of his will; and that he left his wife

and three sons and one daughter, him surviving, all of whom have attained twenty-one

4. Of death of testator's wife.

5. Of agreement of eldest son to purchase the shares of his brothers and sister in the trust premises, and of his desire to have the same conveyed to him as real estate.

6. Testatum.

7. Habendum to trustee for purchaser to the use of purchaser in fee.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*trustees of will*) of, &c. of the first part; (*a*) (*three sons and daughter of testator*), of, &c. of the second part; (*testator's eldest son, who is the purchaser*), of, &c., of the third part; and (*purchaser's trustee*), of, &c., of the fourth part.

2. WHEREAS (*testator*), late of, &c., deceased, by his last will, dated the day of , amongst other devises and bequests, gave and devised the hereditaments and premises hereinafter described unto the said (*trustees*) and their heirs, To THE USE of the said (*trustees*) and their heirs, UPON TRUST to pay the rents and profits thereof unto the said testator's wife (*wife's name*), and her assigns for her life, if she should so long continue his widow;
Recital of will devising premises to trustees upon trust to pay rents and profits to testator's wife for life or widowhood, and then to sell and divide the proceeds equally

(a) The eldest son, although the actual purchaser, must nevertheless be one of the conveying parties.

No. XXXIII. and after her decease or second marriage, *upon trust* that the said (trustees), or the survivor of them, his executors or administrators, should, as soon as conveniently might be thereafter, sell the said hereditaments and premises, either by public auction or private contract; and divide the proceeds of the sale amongst such of the

*Conveyance
in Fee by Trustees
under Trusts
for Sale in a
Will to a
Purchaser.*

amongst such of his children as being sons shall attain twenty-one, or being a daughter, shall attain that age or marry.

Of death of testator; probate of his will, and that he left his wife and three sons and one daughter him surviving, all of whom have attained twenty-one.

children of the said testator, living at the time of his decease, who, being a son or sons should attain the age of twenty-one years, or who, being a daughter or daughters, should attain that age or marry, in equal shares as tenants in common.

3. AND WHEREAS the said (*testator*) died shortly after making his said will, without having altered or revoked the same, leaving the said (*wife's name*) and three sons and one daughter: namely, the said (*eldest son*), (*second son*), (*third son*), and (*daughter*), him surviving; all of whom have attained the age of twenty-one years, and the said recited will was duly proved by the said (*trustees of will*), his executors therein named, in the Prerogative Court of the Archbishop of Canterbury, on the day of

Of death of wife.

4. AND WHEREAS the said (*wife*) died on the day of last.

Of agreement of eldest son to purchase the shares of his brothers and sister in the trust premises, and of his desire to have the same conveyed to him as real estate.

5. AND WHEREAS the said (*eldest son*) has agreed to purchase the share of the said (*second son*), (*third son*), and (*daughter*), in the said trust estate and premises for the sum of 3,756*l.*; and being desirous of having the said hereditaments and premises conveyed to him as real estate, instead of being sold under the trusts of the said hereinbefore recited will, the said (*eldest son*) hath requested the said (*trustees of will*) to forbear the exercise of such trusts, and to convey and assure the same premises to and for his use and benefit in manner hereinafter appearing.

Testatum.

6. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the sum of 3,756*l.* sterling, paid by the said (*eldest son*) to the said (*second son*), (*third son*), and (*daughter*), in equal proportions, on the execution of these presents, the receipt of which the said (*second son*), (*third son*), and (*daughter*), do, and each and every of them doth, hereby acknowledge, and therefrom, and every part thereof, do and each

and every of them doth acquit, release, exonerate, and for ever discharge the said (*eldest son*), his heirs, executors, administrators, and assigns, and also in consideration of the sum of 5*s.*, at the same time as aforesaid paid by the said (*trustee for purchaser*) to the said (*trustees of will*), the receipt of which is hereby acknowledged, the said (*trustees of will*), at the request and by the direction of the said (*eldest son*), (*second son*), (*third son*), and (*daughter*), (testified by their being parties hereto), DO by these presents grant, release, and convey, and the said (*eldest son*), (*second son*), (*third son*), and (*daughter*), DO, and each and every of them DOTH by these presents, grant, release, ratify, and confirm, unto the said (*trustee for purchaser*) and his heirs, ALL, &c. [DESCRIBE *parcels*, INSERT *general words, all-estate clause, and all-deeds clause, ut ante*, No. I., clause 5, p. 45.]

No. XXXIII.

Conveyance
in Fee by Trustees
under Trusts
for Sale in a
Will to a
purchaser.

7. TO HAVE AND TO HOLD the said (*short general description*), with their appurtenances, unto the said (*trustee for purchaser*) and his heirs, TO THE ONLY PROPER USE AND BEHOOF of the said (*eldest son*), his heirs and assigns for ever. [INSERT *declaration to debar widow of dower, ut ante*, No. I., clause 7, p. 48. ADD *usual qualified covenants for title, &c., by testator's three sons and daughter, with trustee for purchaser, (b) ut ante*, No. X., clauses 5, 6, 7, pp. 76, 77. ALSO, *covenant from trustees of will that they have done no act to incumber, ut ante*, No. V., clause 6, p. 61.]

IN WITNESS, &c.

(a) Covenants for title should always be entered into with the grantee or releasee to uses, and not with the *cestui que use*, in order to prevent any questions from being raised as to whether such covenants run with the land, which they will not do when entered into between parties with whom there is no privity of estate, as when entered into with *cestui que use* instead of the grantee or releasee to uses: (*Webb v. Russell*, 3 T. R. 393; *Stokes v. Russell*, ib. 678; *Roach v. Wadham*, 6 East, 286) But if made to the grantee or releasee to uses, then the covenants will enure incidentally to the *cestui que use*, and having thus once become annexed to the land, they will continue to run with it through all the subsequent modifications of ownership which the land may undergo; (1 Hughes Pract. Sales, 410, 2nd edit.)

Practical
remarks.

No. XXXIV.

CONVEYANCE IN FEE BY TENANT FOR LIFE UNDER A POWER IN AN INCLOSURE ACT. VARIATION, WHERE THE PROPERTY IN RESPECT OF WHICH THE ALLOTMENTS ARE MADE IS OF COPYHOLD TENURE. (a)

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of deed of settlement creating entail. 3. Recital of inclosure act. 4. Of commissioners' award. 5. That tenant for life has incurred expenses in respect of inclosure act. 6. Of application by tenant for life to commissioners to permit sale. 7. Of sale by auction. 8. Of amount of expenses. | <ol style="list-style-type: none"> 9. Testatum, by which tenant for life conveys with approbation of commissioners. 10. Habendum. 11. Covenant for title, &c. |
|---|--|

Substituted Clauses.

- A. Recital of will devising copyhold.
- B. Of testator's death.
- C. Of admission of tenant for life.

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
 BETWEEN (*tenant for life*), of, &c., of the first part; (*commissioners*), of, &c. (commissioners appointed by an act of Parliament passed in the year of the reign of Her present Majesty Queen Victoria, and hereinafter recited), of the second part; and (*purchaser*), of, &c., of the third part.

Practical
 observations

(a) It seems that no *surrender* will be required in a conveyance of the above description, the execution of the power of sale under the act of Parliament rendering such surrender unnecessary. But this will not supersede the necessity of an admittance to perfect the purchaser's title, or the right of the lord to his fine. The *ad valorem* stamp, however, which, if a surrender had been made, would have been placed on the memorandum of surrender, must now be affixed to the purchase deed, and not attached to the admission.

2. WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of in the year , the indenture of release being made between the said (*tenant for life*) of the first part; (*maiden name of wife*) of the second part; and (*trustees*) of the third part (being a settlement made previously to and in contemplation of a marriage then intended between the said (*tenant for life*) and (*maiden name of wife*), which was shortly afterwards solemnized), the hereditaments and premises therein and hereinafter described, and which are also intended to be hereby granted and released, were limited and assured, from and immediately after the solemnization of the said intended marriage, TO THE USE of the said (*tenant for life*) and his assigns for life, without impeachment of waste; and in case of the determination of that estate in his lifetime, TO THE USE of the said (*trustees*) and their heirs, during the life of the said (*mortgagor*), UPON TRUST to preserve the contingent remainders thereafter limited; and after his decease, TO THE USE of the first and other sons of the said intended marriage, successively and in remainder one after another in tail male general; with divers remainders over; with the ultimate remainder to the right heirs of the said (*tenant for life*) for ever. (*b*)

No. XXXIV.

Conveyance in Fee by Tenant for Life under a Power in an Inclosure Act.

Recital of deed. of settlement creating entail.

(*b*) If the property is copyhold, insert the three following clauses:

A. WHEREAS (*testator*), late of, &c., deceased, being seised in fee of certain copyhold hereditaments and premises held of the manor of A——, in the county of B——, by his last will, dated on or about the day of , devised the same copyhold hereditaments unto the said (*tenant for life*), for and during the term of his natural life, with remainder to his first and other sons in tail male general, with divers remainders over.

Recital of will devising copyholds.

B. AND WHEREAS the said (*testator*) died on or about the day of , without having altered or revoked his said will, which was duly proved by the executors therein named in the Prerogative Court of the Archbishop of Canterbury, on the day of .

Of testator's death.

No. XXXIV.

*Conveyance in
Fee by Tenant
for Life under
a Power in an
Inclosure Act.*

Recital of
inclosure act.

Power of
commissioners
to make
allotments;

To make
exchanges.

Commissioners
to make award.

3. AND WHEREAS by the said act of Parliament of the year of the reign of Her present Majesty Queen Victoria hereinbefore referred to, the said commissioners and their successors are appointed commissioners for dividing, allotting and inclosing the open and common fields, and other commonable lands, parcel of the manor of A—, in the county of B—, and after deducting certain allotments to the lord of the said manor, in lieu of his right to the soil thereof, and to the rector or impropiator of the tithes, in lieu of his tithes, both great and small, arising within the parish in which the said manor is situated, IT IS ENACTED, that the said commissioners should set out the residue of the said open and common fields and other commonable lands, amongst all the proprietors of lands, rights of common, or other hereditaments for which no allotment was thereinbefore specially directed to be made, in such proportions as the said commissioners should determine to be a just equivalent for their several lands, rights of common, or other hereditaments, in proportion to the respective values of the same, subject to the particular directions therein contained. AND IT IS FURTHER ENACTED, that the aforesaid allotments shall be in lieu and satisfaction of all rights of common, and of all other rights and interests in, to, out of, upon or in respect of the said open and common fields and commonable lands. AND the said commissioners are also empowered to make exchanges of any lands thereby directed to be allotted for any other lands in the same parish, or in any other parish or township thereunto adjoining; and every such exchange is thereby declared to be for ever valid, notwithstanding the want of title in any of the exchanging parties. AND IT IS FURTHER ENACTED, that as soon as such allotment as aforesaid shall be complete, the said commissioners should draw up an award according to the particular directions of the now reciting act. AND IT IS FURTHER ENACTED,

Of admission of
tenant for life.

C. AND WHEREAS at a Court Baron or customary court holden in and for the said manor of A—, on the day of , the said (*tenant for life*) came and was admitted tenant of the said copyhold hereditaments and premises, as such devisee as aforesaid, TO HOLD to him and his assigns according to the limitations contained in the said hereinbefore recited will.

that the allotted lands respectively allotted and exchanged, should be subject to the same uses as the lands in respect of which the same should be respectively allotted and exchanged. AND IT IS FURTHER ENACTED, that the expense of the inclosure is to be borne by all the owners of the said common fields or other commonable lands in proportion to their respective estates and interests, the amount of which is directed to be settled by the said commissioners, and to be paid to such person or persons, and at such time or times, as the said commissioners shall direct or appoint. AND IT IS FURTHER ENACTED, that tenants in tail, or for life only, (c) of the allotted lands, may by indenture or indentures, duly sealed and delivered, and enrolled in any of Her Majesty's Courts of Record at Westminster, and with the consent of the said commissioners, to be testified in writing under their respective hands and seals, sell and convey to any person or persons whomsoever, such part or parts of any old inclosures, or such part or parts of any new allotment or allotments to be allotted to such tenants in tail, or tenants for life respectively, by virtue of the said act, as shall be necessary for the purpose of defraying the respective proportions of the expenses of obtaining the said act, and of such inclosure and division, and the execution of any other powers contained in the said act, and also the charges of such sale, and all other necessary expenses incidental thereto, to be ascertained by the said commissioners; and that the person to whom such old inclosures or new allotments should be sold and conveyed should hold and enjoy the same according to the terms of the sale and conveyance thereof, without interruption from the person or persons to whom any such old inclosures shall belong, or allotments shall be made by the said award, or by any person or persons whomsoever claiming under them, any settlement, will, use, trust, remainder, limitation or other impediment or incumbrance not-

No. XXXIV.

Conveyance in
Fee by Tenant
for Life under
a Power in an
Inclosure Act.

Expenses of
inclosure to be
borne by
respective
owners.

Tenants for
life or in tail
empowered to
convey.

(c) A special clause is necessary in an Inclosure Act to enable a tenant for life or in tail to sell any portion of the settled property for the purpose of defraying the expenses incidental to the inclosure allotment; for the General Inclosure Act (41 Geo. 3, c. 109), merely empowers him to charge the allotments with those expenses by effecting a mortgage of the allotments for a term of years: (see *Lee v. Alston*, 1 Ves. 78.) But if a tenant for life or in tail is specially authorized to effect a sale by the particular inclosure act under which his allotments are made, it is almost needless to say, that a sale by him in pursuance of such act will be unimpeachable.

Practical
remarks.

No. XXXIV. withstanding. AND IT IS ALSO ENACTED AND PROVIDED, that
Conveyance in
Fee by Tenant
for Life under
a Power in an
Inclosure Act.
 Commissioners
 to be parties to
 conveyances.
 As to mode of
 sale.
 no such sale or conveyance of any old inclosures, or new allotments
 as aforesaid, shall be valid, unless the said commissioners shall
 certify their consent and approbation thereto, by signing and
 sealing the deed of conveyance thereof. AND FURTHER, that in
 cases where such lands may be sold in pursuance of the said act,
 such sale may be made by public auction or private contract,
 provided that, in the case of sale by private contract, the said
 commissioners shall be satisfied that the price given for the same
 is not less than the actual value thereof, according to any estimate
 directed to be made by them, and verified by oath, which any one
 of the said commissioners is thereby empowered to administer;
 but where the sale is made by public auction, no such estimate of
 value shall be required.

Of commis-
 sioners' award.

4. AND WHEREAS the said commissioners, as such commissioners
 as aforesaid, by an award in writing under their hands and seals,
 dated on or about the day of , have, in pursuance of the
 said first-recited act, set out and allotted unto the said (*tenant for*
life), in lieu of his right of common, and of all other rights and
 interests in, to, out of or upon, or in respect of the said open
 and common fields and commonable lands, to which he is
 entitled as such tenant for life as aforesaid, of and in the lands
 by the said first-recited act directed to be divided and inclosed,
 and exonerated from tithes, the several allotments hereinafter
 described, and which are intended to be hereby granted and
 released.

That tenant for
 life has incurred
 expenses in
 respect of
 inclosure act.

5. AND WHEREAS the said (*tenant for life*) has expended a con-
 siderable sum of money in defraying his proportion of the expenses
 incurred in passing the said act, and of such inclosure and division,
 and the execution of any other powers contained in the said act,
 amounting altogether to the sum of £ , a statement of which
 has been exhibited before the said (*commissioners*), who have
 ascertained the said sum of £ to be a reasonable claim
 to the said (*tenant for life*), and do hereby allow the same
 accordingly.

Of application
 by tenant for

6. AND WHEREAS the said (*tenant for life*) hath applied to the

said (*commissioners*) for their consent to a sale and conveyance of such parts of the said allotments so allotted to him as aforesaid, or of any old inclosure belonging to them, as shall be ascertained by the said commissioners to be necessary for defraying the said sum of £ , and also the expenses of such sale; and in consequence of such application, the said (*commissioners*) have directed the allotments hereinafter described, and which are also intended to be hereby granted and released, to be sold and conveyed for the purposes aforesaid, by public auction, for the best price that can be obtained for the same.

No. XXXIV.

Conveyance in Fee by Tenant for Life under a Power in an Inclosure Act.

life to commissioners to permit sale.

7. AND WHEREAS the allotments hereinafter described, were, in pursuance of such direction of the said (*commissioners*), put up for sale by public auction by Mr.—, at the , on the day of , pursuant to public advertisements, and certain printed conditions of sale, at which sale the said (*purchaser*), being the highest bidder, was declared to be the purchaser of the said allotments at the price of £ .

Of sale by auction.

8. AND WHEREAS the said (*commissioners*) have ascertained that the proportion of the expenses incurred by the said (*tenant for life*) on account of the aforesaid sale, amounting altogether to the sum of £ , which with the said sum of £ , the said purchase-money, making together the sum of £ , do not exceed the sum of £ , being the amount of the proportion so as aforesaid allowed to the said (*tenant for life*) of the expenses of obtaining the said act, and of such inclosure and division, and the execution of any other process contained in the said act, and all other necessary expenses incidental thereto.

Of amount of expenses.

9. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £ sterling, paid by the said (*purchaser*) to the said (*tenant for life*) on the execution hereof, by the direction and appointment of the said (*commissioners*), (testified by their signing and sealing these presents), the receipt of which said sum of £ the said (*tenant for life*) doth hereby acknowledge, and therefrom doth release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*tenant for life*), in pursuance and in exercise and execution of the

Testatum, by which tenant for life conveys with the approbation of commissioners.

No. XXXIV. power given to or vested in him by the said hereinbefore first-recited act of Parliament, and with the concurrence and approbation of the said (*commissioners*), (testified as aforesaid), DOTH by this present indenture, by him the said (*tenant for life*) duly sealed and delivered, and intended to be enrolled in some one of Her Majesty's Courts of Record at Westminster, pursuant to the directions of the said act, grant, bargain, sell, (*d*) release, convey, ratify and confirm unto the said (*purchaser*) and his heirs, ALL [DESCRIBE *parcels* AND INSERT *general words*.] (*e*)

*Conveyance in
Fee by Tenant
for Life under
a Power in an
Inclosure Act.*

Habendum.

10. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereinbefore described, and hereby granted, released and conveyed, with their appurtenances, unto the said (*purchaser*) and his heirs, TO THE USE of the said (*purchaser*), his heirs and assigns for ever.

Covenant for
title, &c.

11. AND the said (*tenant for life*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act or thing done or permitted by him the said (*tenant for life*) to the contrary), he, the said (*tenant for life*), under and by virtue of the said act of the year of the reign of Her present Majesty Queen Victoria, hereinbefore referred to, now hath in himself, with such concurrence and approbation of the said commissioners as aforesaid, and for the purposes mentioned in the said act, good right to convey the said hereditaments and premises hereby granted and released, with their appurtenances, unto and to the use of the said (*purchaser*),

When the words
"bargain" and
"sell" should
be omitted in
deeds requiring
enrolment.

(*d*) In case the present conveyance contains a limitation to uses to bar dower, the words "bargain, sell," should be omitted; for as the present deed is required by the express terms of the act to be enrolled in one of Her Majesty's courts at Westminster, if those words were allowed to remain, the assurance must operate as a bargain and sale enrolled, and thus vesting the use in the purchaser would not only render a wife, married previously to 1834, dowerable, but would also restrict his power of appointment to mere equitable estates.

(*e*) The all-estate clause must be omitted, being inapplicable to a mode of disposition, by which, under the powers of the act, a tenant for life conveys an absolute estate in fee-simple; for the all-estate clause could only apply to his own life estate in the premises.

his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents. [ADD covenants for quiet enjoyment; freedom from incumbrances; and for further assurance, *ut ante*, No. III., clauses 5, 6, p. 56.]

No. XXXIV.
Conveyance in
Fee by Tenant
for Life under
a Power in an
Inclosure Act.

IN WITNESS, &c.

No. XXXV.

CONVEYANCE BY A VENDOR, WITH THE CONCURRENCE OF AN
ANNUITANT WHO RELEASES AN ANNUITY CHARGED ON THE
PURCHASED LANDS.

- | | |
|---|--|
| 1. Parties.
2. Recital of will creating annuity,
and devising premises to vendor.
3. Of contract to sell.
4. That annuity still remains charged
on premises.
5. Testatum, by which vendor con-
veys. | 6. Habendum to purchaser in fee.
7. Further testatum, by which an-
nuitant releases annuity.
8. Covenant from annuitant that pre-
mises shall be held, discharged
of annuity.
<p style="text-align: center;"><i>Substituted Clause.</i></p> A. Where the annuitant concurs with-
out receiving any consideration. |
|---|--|
-

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*vendor*), of &c., of the first part, (*annuitant*), of &c., of
the second part, and (*purchaser*), of &c. of the third part.

Recital of will
creating
annuity, and
devising pre-
mises to vendor.

2. WHEREAS (*testator*), late of, &c., Esquire, deceased, by his last
will, legally executed and attested, bequeathed unto his daughter
the said (*annuitant*) one clear yearly rent-charge or annuity of 100*l.*
payable quarterly, during the term of her natural life, charged
upon all his real estate, with powers of distress and entry for
securing the due payment thereof, as in the now reciting will is
declared. AND all the rest, residue and remainder of his manors,
messuages, lands, tenements and hereditaments, and all other his
real and personal estate whatsoever and wheresoever, the said
(*testator*) gave and devised to his son, the said (*vendor*), and his
heirs, *to hold* to him, his heirs, executors, administrators and
assigns, for ever; and appointed the said (*vendor*) sole executor
of his said will. [RECITE the death of testator without having

altered his will, and the probate thereof, *ut ante*, No. V., clause 3, p. 60.] No. XXXV.

3. AND WHEREAS the said (*vendor*) has contracted to sell the fee-simple and inheritance of the hereditaments and premises hereinafter described (and which form a portion of the lands and hereditaments comprised in the said hereinbefore recited will), to the said (*purchaser*), free from all incumbrances, for the sum of 6,500*l*.

—
Conveyance
by a *Vendor*,
with the
concurrence of
an *Annuitant*.
—

Of contract to
sell.

4. AND WHEREAS (*a*) the said annuity of 100*l*., being charged upon the said hereditaments and premises, together with the rest of the real and personal estate of the said (*testator*), deceased, the said (*annuitant*) hath agreed to concur in these presents, and to release her said annuity upon receiving the sum of 1,250*l*. out of the said purchase-moneys.

That
annuity still
remains charged
on premises.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract (*b*) [and in consideration of 1,250*l*. sterling (part of the said purchase-money), paid by the said (*purchaser*) to the said (*annuitant*) on the execution hereof, the receipt of which the said (*annuitant*) hereby acknowledges, and therefrom doth release, exonerate, and for ever discharge the said (*purchaser*), his

Testatum, by
which *vendor*
conveys.

(*a*) If the annuitant concurs without any consideration, substitute—

A. "AND WHEREAS the said annuity of 100*l*., being so as aforesaid charged upon the whole of the real and personal estate of the said (*testator*) of very considerable value, over, above and besides the hereditaments and premises hereinafter described; and the said (*vendor*) being desirous of relieving the said hereditaments and premises from the said annuity, in order to convey a perfect and unincumbered title to the said (*purchaser*), hath requested the said (*annuitant*) to release the same premises from such charge, which she hath agreed to do, being perfectly satisfied with the security of the remaining real and personal estate on which the same is so charged as aforesaid."

That annuity
still remains
charged on the
premises
intended to be
conveyed, but
that annuitant
has agreed to
release the same
therefrom.

(*b*) If the annuitant releases without receiving any consideration, the words within brackets must be omitted.

No. XXXV. heirs, executors, administrators and assigns; ALSO] in consideration of the further sum of 5,250*l.* (c) (the remaining part of the said purchase-money) at the same time as aforesaid paid by the said (*purchaser*) to the said (*vendor*), the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*) DOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*: INSERT *general words*; *all-estate clause*; but omitting *all-deeds clause*, *ut ante*, No. I., clause 5, p. 45.]

Conveyance
by a Vendor,
with the
concurrence of
an Annuitant.

Habendum to
purchaser
in fee.

6. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the hereditaments and premises hereinbefore described and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs, TO THE USE of the said (*purchaser*), his heirs and assigns for ever. (d)

Further
testatum, by
which annuitant
releases annuity.

7. AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, SHE the said (*annuitant*) DOTH by these premises remise, release and for ever quit claim unto the said (*purchaser*) and his heirs, ALL that the said yearly rent-charge or annuity of 100*l.* so granted to the said (*annuitant*) for the term of her natural life, and charged upon the said hereditaments and premises hereby granted and released by the said hereinbefore recited will of the said (*testator*), deceased, as aforesaid; TO THE INTENT that the said (*purchaser*), his heirs and assigns, and the hereditaments and premises hereby granted and released, may be effectually released, exonerated, and for ever discharged therefrom, and from all the powers and remedies for recovering and enforcing the payment thereof, and of and from all claims and demands whatsoever in relation thereto.

Covenant from
annuitant that

8. AND the said (*annuitant*) doth hereby for herself, her heirs,

(c) If the annuitant conveys without consideration, the full amount of purchase money must be here stated.

(d) If the property is to be limited to dower uses, insert clauses for that purpose, *ut ante*, No. III., clauses 6, 7, pp. 17 to 19.

executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that the said hereditaments and premises hereby granted and released, with their appurtenances, shall henceforth, from time to time and at all times hereafter, be held and enjoyed by the said (*purchaser*), his heirs and assigns, freed and discharged, or otherwise well and sufficiently protected, saved harmless, and kept indemnified of and from the said annuity of 100*l.*, in the same manner as if the same had never been charged thereon by the said hereinbefore recited will of the said (*testator*) deceased, or in any other manner howsoever. [ADD *usual qualified covenants for title from vendor, ut ante*, No. III., clauses 5, 6, 7, p. 23; INSERT ALSO, *recital that title deeds relate to other property of the vendor of greater value, and covenant for their production, ut ante*, No. X., clauses 8, 9, pp. 77, 78.]

No. XXXV.

Conveyance
by a Vendor,
with the
concurrence of
an Annuitant.

premises shall
be held dis-
charged of
annuity.

IN WITNESS, &c.

THE SCHEDULE TO WHICH THE ABOVE-WRITTEN INDENTURE REFERS—
(INSERT *form of schedule, ut ante*, p. 63.)

XXXVI.

CONVEYANCE WHERE THE SALE IS MADE UNDER A POWER
OF ATTORNEY.^(a)

- | | |
|----------------------------------|---|
| 1. Parties. | 5. Habendum. |
| 2. Recital of power of attorney. | 6. Covenant to produce power of attorney. |
| 3. Of contract. | 7. Of execution by attorney. |
| 4. Testatum. | |

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 ,
BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*), of,
&c., of the other part. (*a*)

Recital of power
of attorney.

2. WHEREAS the said (*vendor*), being seised in fee, or otherwise
well and sufficiently entitled unto, the hereditaments and premises
hereinafter particularly described, and which are intended to be
hereby granted and released, did by a certain deed poll under his
hand and seal, dated the day of , in the year , con-
stitute and appoint the said (*attorney*) to be the true and lawful
attorney of him the said (*vendor*), and in his name to make
sale and absolutely dispose of all and singular the freehold and
leasehold estates of him the said (*vendor*) in England, either by
public auction or private contract, and subject to such conditions
and stipulations with respect to the title, or evidence of title, or
otherwise, as the said attorney should think fit, and also with full
power and authority to buy in and resell the same premises at any

Practical
suggestions.

(*a*) It is not necessary to name the attorney as one of the conveying parties,
because the power of attorney passes no interest, but merely gives an authority
to execute the deed in the name of the principal.

future sale or sales, without being responsible for any loss or diminution of price that might be thereby sustained; and also with full power to execute all such acts, deeds, devices, conveyances and assurances, for the purpose of perfecting such sale or sales, and also with power to give receipts for the purchase-moneys, which should effectually exonerate the parties paying the same from all responsibility with respect to the application thereof.

No. XXXVI.
 —
*Conveyance
 where the Sale is
 made under a
 Power of
 Attorney.*
 —

3. AND WHEREAS the said (*purchaser*) hath contracted with the said (*vendor*), through the said (*attorney*), his attorney, for the absolute purchase of the hereditaments and premises hereinafter described, and the fee simple and inheritance thereof, in possession, free from incumbrances, for the price of £ .

Of contract

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of 1,000*l.* sterling, paid to the said (*vendor*) (*b*) through the hands of the said (*attorney*), his attorney, on the execution hereof, the receipt of which the said (*vendor*) doth hereby acknowledge, and therefrom doth by these presents release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*), by the said (*attorney*), his attorney, BOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [DESCRIBE *parcels*, AND INSERT *general words*], and all rights, members and appurtenances whatsoever to the said hereditaments and premises hereby granted and released, belonging or in anywise appertaining, or with the same or any part thereof at any time heretofore demised, leased, held, used, occupied or enjoyed, as part, parcel or member thereof, and all the estate, right, title, interest, inheritance, use, trust, possession, property, profit, benefit, claim and demand whatsoever, both at law and in equity, of him the said (*vendor*), of, in, to, out of or upon the said hereditaments and premises, and every part and parcel thereof; TOGETHER with all deeds, evidences and

Testatum.

(*b*) The acknowledgment of the receipt of the purchase-money in the body of the deed should be in the vendor's name, notwithstanding the money is received by the attorney, and the deed also executed by him. As to the signature of the receipt indorsed, see note (*c*), *infra*. Practical directions.

No. XXXVI. writings, relating to the title of the said hereditaments and premises, in the custody, possession or power of the said (*vendor*), or the said (*attorney*), his attorney, or which they or either of them can procure or obtain without suit at law or in equity.

Conveyance
where the Sale is
made under a
Power of
Attorney.

Habendum.

5. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their rights, members and appurtenances, unto the said (*purchaser*), and his heirs, TO THE USE of the said (*purchaser*), his heirs and assigns for ever. [ADD declaration to debar widow of dower, *ut ante*, No. I., clause 7, p. 48; and usual qualified covenants for title by vendor, *ut ante*, No. III., clauses 4, 5, 6, inclusive, p. 56.]

Covenant to
produce power
of attorney.

6. AND ALSO, that he the said (*vendor*), his heirs or assigns, shall and will from time to time, and at all times, at the request and costs of the said (*purchaser*), his heirs or assigns, produce and show forth, or cause or procure to be produced or shown forth, in England, unto the said (*purchaser*), his heirs or assigns, or his or their attorney, solicitor, agent or counsel, or at any trial, either at law or in equity, the said hereinbefore mentioned deed poll or power of attorney (an attested copy whereof is hereunto annexed), in manifestation, defence and support of the title of the said (*purchaser*), his heirs and assigns, to the said hereditaments and premises hereby granted and released, and every or any part of the same.

Of execution by
attorney.

7. IN WITNESS whereof the said (*attorney*), by virtue of the power contained in the said hereinbefore recited deed poll, hath hereunto set the seal, and subscribed the name of the said (*vendor*), the day and year first above written. (c)

Practical
directions.

(c) When a deed is executed by attorney, the latter ought to deliver it in the name and as the act and deed of his principal (*Coombe's case*, 9 Rep. 75; *Hawkins v. Kemp*, 3 East, 410), and should sign this deed with the name of the principal alone, or with the addition of, "by C. D. (*his own name*) his attorney:" (3 Prest. Abr. 67.)

The signature to the receipt clause indorsed for the purchase-money must be signed by the attorney in his own name, but with the additional description of

"the above-mentioned attorney for the said (*vendor*)."

No. XXXVII.

CONVEYANCE UNDER AN ORDER OF THE COURT OF
CHANCERY.

- | | |
|--|---|
| 1. Parties. | 5. Of the Master's report thereof. |
| 2. Recital of will devising premises upon trusts for sale; the death of testator, and the probate of his will. | 6. Confirmation of Master's report. |
| 3. Of order of the Court of Chancery for sale of the premises. | 7. Of payment by the purchaser of purchase-money into the bank. |
| 4. That premises were put up for sale, and that purchaser was declared the highest bidder. | 8. Testatum. |
| | 9. Habendum. |

1. THIS INDENTURE, made the day of , A.D. 185 , Parties.
BETWEEN (*trustees*), of, &c., of the one part, (*a*) and (*purchaser*),
of, &c., of the other part.

2. WHEREAS (*testator*), late of, &c., deceased, by his last will, Recital of will
dated on or about the day of , devised and bequeathed devising
premises upon

(*a*) The purchaser has a right to require the concurrence of all persons Practical
having a legal title to, or remedy against, the property, although parties to observations.
the suit; but it does not appear that, even at his own expense, he can insist
on the concurrence of parties having mere equitable estates who are bound
by the decree: (*Webber v. Jones*, 6 Ir. Eq. Rep. 142.) Where the decree
directs that all proper parties shall convey, and any of the parties to the suit
whom the Master directs refuses to concur, the practice has been to move against
the recusant party (and not against the plaintiffs,) that he do convey: (*Stillwell*
or *Stillwell v. Mellersh*, 10 Sim. 367; 4 Myl. & Cr. 581.) But the more usual
course of proceeding, where the party refuses to execute, now, is to treat such
party as a trustee within the 1 Will. 4, c. 60, and to obtain an order for some
other person to convey under that act; and an order for a conveyance, or a
vesting or releasing order, having the effect of a conveyance, may now be
obtained under the 13 & 14 Vict. c. 60, ss. 29, 30.

No. XXXVII. all his real and personal estate unto the said (*trustees*), their heirs, executors and administrators, UPON TRUST, as soon as conveniently might be after his decease, to sell and dispose of all his freehold and leasehold property by public auction or private contract, and to enter into all such contracts respecting such sales as his said trustees or trustee should deem expedient, with power to buy in and re-sell the same or any part thereof without being responsible for any loss that might be thereby incurred, and to convey and assure the said trust estate and premises, when sold, to the purchaser or purchasers thereof, or to such uses as he or they should direct, and that the said (*trustees*) should apply the proceeds of such sale, after deducting the incidental expenses thereby incurred, in payment of his just debts, funeral and testamentary expenses, and then to stand possessed of the surplus moneys upon certain trusts for the benefit of the said (*cestuis que trust*) as in the now-reciting will is expressed and contained. AND the now-reciting will also contains a declaration that the receipts of the trustees or trustee for the time being thereof shall effectually exonerate the parties taking the same from the payment of all such moneys as therein shall be expressed to have been received, or from seeing to the application thereof. AND the said (*testator*) appointed the said (*trustees*) joint executors of his said will, which (he the said (*testator*), having died on or about the day of in the year , without having altered or revoked) was duly proved by his said executors in the Prerogative Court of the Archbishop of Canterbury on the day of following.

Conveyance
under an
Order of the
Court of
Chancery.

trusts for sale;
the death of
testator, and
probate of his
will.

Of order of the
Court of
Chancery for
sale of the
premises.

3. AND WHEREAS, by a decree, or decretal order of the High Court of Chancery, bearing date the day of , made by His Honour Vice-Chancellor — in a certain cause wherein the said (*cestuis que trust*) were plaintiffs, and the said (*trustees*) were defendants, IT WAS ORDERED that the said (*testator's*) will should be established and the trusts thereof performed, and that all the lands and hereditaments then remaining unsold should be sold, either together or in parcels, with the approbation of (*Master's name*), esquire, one of the Masters of the said Court, to the best purchaser or purchasers that could be got for the same, and that all proper parties were to join in the conveyance thereof in such manner as the said (*Master*) should direct; and it was ordered that

the moneys to arise from such sale or sales should be paid into the Bank of England with the privity of the Accountant-General of the said Court, to be placed to the credit of the said cause.

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*Conveyance
under an
Order of the
Court of
Chancery.*

4. AND WHEREAS, in pursuance of the said decree, the hereditaments and premises hereinafter described, were, with certain other hereditaments and premises of the said (*testator*), forming altogether six distinct lots, on the day of offered for sale by public auction, before the said (*Master*), at the public sale-room at , pursuant to public advertisements in the *London Gazette*, in several of the London newspapers, and also in such provincial newspapers as are in most general circulation in the neighbourhood of the property, (*b*) and according to certain printed particulars and conditions of sale, (*c*) at which sale by auction the said (*purchaser*), being the highest bidder, was declared to be the purchaser of Lot I., being the hereditaments and premises hereinafter described, at the price of 3,550*l*.

That premises were put up for sale, and that purchaser was declared the highest bidder.

5. AND WHEREAS the said (*Master*), by his report made in the said cause, bearing date the day of , certified that the said (*purchaser*) was the purchaser of the said hereditaments and premises at the said sum of 3,550*l*. (*d*)

Of the Master's report thereof.

(*b*) There are always two advertisements in sales before a Master, and the time of sale is stated only in the second or peremptory advertisement, which time is fixed by the Master with the approbation of the parties to the cause: (Dan. Chan. Pr. 1195.)

Practical observations.

(*c*) In particulars and conditions of sale in sales before a Master it is not usual to stipulate that the highest bidder shall be the purchaser, or that, in case any dispute shall arise as to who was the highest bidder, the lot shall be again put up at the last undisputed bidding (3 *Dav. Con.* 92); nor is it usual to require that any deposit shall be paid, except where standing timber is sold separately from the estate, or to insert any stipulation that the purchaser shall sign an agreement to complete the purchase; but independently of any stipulation the purchaser is bound to sign his name, description, and place of abode, after the amount of his bidding, on a copy of the particulars: (1 *Turn. Pract.* 129; 1 *Dan. Cha. Pract.* 1197; 1 *Hughes Pract. Sales*, 62, 2nd edit.)

How conditions of sale are penned in sales before a Master in Chancery.

(*d*) The mere circumstance of being declared the highest bidder does not, in sales before a Master, invest such bidder with the character of a purchaser, nor does he acquire such character until he is declared to be such by the confirmation of the Master's report. To obtain this the purchaser must, at his own expense, make an application to the Master to report him to be the purchaser, which report is then filed, and an office copy taken and delivered to such purchaser. The next step is for him either to present a common petition or to

Being declared the highest bidder does not invest bidder with the character of purchaser until

No. XXXVII. 6. AND WHEREAS by another order of the same court, made in the same cause, bearing date the day of , the report

Conveyance
under an
Order of the
Court of
Chancery.

confirmation of
master's report.

move for an order that the report may be confirmed *nisi*: (Fowl. Pract. 307 ; 2 Smith's Pract. 184, 2nd edit. ; 1 Hughes Pract. Sales, 62, 2nd edit.) On the eighth day after the expiration of the order *nisi*, and of a certificate obtained at the Registrar's office, of no cause having been shown, the order *nisi* may be made absolute: (2 Smith's Pract. 186, 2nd edit.) Where the parties are not numerous, and are willing to consent to the arrangement, the order *nisi* may be altogether dispensed with, and the order confirmed absolutely in the first instance. To effect this the purchaser presents a petition as of course to the Master of the Rolls, praying for an absolute confirmation of the report. The same object may, indeed, be arrived at by a motion of course, all parties giving consent briefs, but the former, being the most expeditious as well as the least expensive course of proceeding, is the preferable one in every respect: (*Ib.*)

Should the purchaser, after obtaining the order *nisi*, fail to confirm the order, the vendor himself may make the motion: (*Chillingworth v. Chillingworth*, 1 Sim. & Stu. 291.)

As to the open-
ing of the
biddings.

The usual cause shown against a purchaser confirming his report absolutely is an application by some other party to open the biddings, which right is a peculiar property incidental to sales under a decree or order of the Court of Chancery. The object of this practice is to obtain as high a price as can possibly be obtained for the property, although instances are not wanting to show that this course of proceeding has produced a totally opposite effect, and it is altogether a matter upon which very divided opinions appear to have been entertained. By some it has been thought to do more harm than good ; while others have insisted that the right should be even less restricted than it is: (2 Mad. Pract. 501, 2nd edit. ; 1 Hughes Pract. Sales, 2nd edit.) The biddings may, however, be opened more than once, and that even at the instigation of the same party, if sufficient cause is shown (*Scott v. Nisbett*, 3 Bro. C. C. 475 ; *Hodges v. Jones*, 2 Fowl. Pract. 318 ; *Upton v. Lord Ferrers*, 4 Ves. 760 ; *Rigby v. M'Namara*, 6 ; *ib.* 617 ; *Preston v. Barker*, 16 ; *ib.* 140 ; *Walond v. Walond*, 8 Beav. 352) ; and instances have occurred where the biddings have been opened even after the confirmation of the Master's report ; as for example, where a large increase of price has been offered, coupled with the circumstance of the party for whose benefit the sale was made being in prison : (*Bowyer v. Backwell*, 3 Anstr. 656 ; *White v. Wilson*, 14 Ves. 153 ; *Executors of Fergus v. Gore*, 1 Sch. & Lef. 350.) But, generally speaking, the court will refuse to open the biddings after the report is confirmed, unless some gross fraud has been practised ; as for example, where parties have agreed not to bid against each other, or a fraudulent survey has been made of the premises with the connivance or knowledge of the purchasers by which the estate is misrepresented in point of extent or value, and the vendor was ignorant of the deception, in which case even an absolute report will not prevent the biddings from being again opened.

Usual ground
for application
to open bid-
dings.

The usual ground upon which an application to open the biddings is founded is a further advance in price, though it does not appear to be clearly settled what amount of increase the court will require. Formerly an opinion seems to have been entertained that ten per cent. on the original purchase-money, where the purchase-money was large, would be received (*Anon.*, 3 Mad. Rep. 494) ; but no such rule now prevails: (*Bridges v. Phillips*, 2 Mad. Pract. 502, 2nd edit., cited *Andrews v. Emerson*, 7 Ves. 4 ; *White v. Wilson*, 14 *ib.* 151), and in many instances a less advance has been holden sufficient, and the biddings have been opened even on so low an advance as five per cent., where the purchase-money has amounted to a considerable sum ; as for instance, 500*l.* or 10,000*l.* ; whilst in other cases where the amount of price was small, advances at a far greater per centage have been refused. In *Garston v. Edwards* (1 Sim. & Stu. 20), an advance of 300*l.* on 3,500*l.* was refused, whilst in *Laurence v. Halliday*

of the said (*Master*) was confirmed, unless the said plaintiffs and defendants, or their respective clerks in court, having notice thereof, should within days after such notice show good cause to the contrary; and by an order of the same court made in the same cause, bearing date the day of , the said last-mentioned order was made absolute and confirmed, and the said (*purchaser*) declared to be the purchaser of the said hereditaments and premises at the sum of 3,550*l*.

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Conveyance
under an
Order of the
Court of
Chancery.

7. AND WHEREAS, in pursuance of the said last-mentioned order, the said (*purchaser*) on the day of , with the approbation of the said (*trustees*), and with the privity of the Accountant-General of the said court, paid into the Bank of England the sum of 3,500*l*., to be there placed to the credit of the Accountant-General of the said court, to the credit of the said cause.

Of payment by
the purchaser
of purchase-
money into the
bank.

8. NOW THIS INDENTURE WITNESSETH, that in pursuance of and in obedience to the said decree and the said several subsequent orders hereinbefore mentioned, and in consideration of the sum of 3,500*l* sterling, so as aforesaid paid by the said (*purchaser*) into the Bank of England, in the name and with the privity of the Accountant-General of the said Court of Chancery, to the credit

Testatum.

(6 Sim. & Stu. 296), the same offer of advance, viz. 300*l*. on 5,030*l*. was accepted, as also the sum of 365*l*. on 7,300*l*. and 350*l*., on 3,500*l*. in two still more recent cases: (*Domville v. Barrington*, 2 You. & Coll. 723; *Holroyd v. Wyatt*, *ib.* 537.) Upon the whole, therefore, it seems that the court is not so much guided by per centage as amount: consequently, where an important sum, as 500*l*. or five per cent. on 10,000*l*. is offered to be advanced, it would probably be accepted, whilst an offer to advance 50*l*. the same rate of interest on 1,000*l*. would be refused; and under any circumstances where the advance offered is inconsiderable, as 40*l*. for instance, the application will be disregarded: (*Farlow v. Wielden*, 4 Mad. 460; *Brookfield v. Bradley*, 1 Sim. & Stu. 23; *Leland v. Griffiths*, 2 Moll. 510; *Ward v. Cooke*, 9 Sim. 87; *Templer v. Smeel*, 8 Beav. 464.) And where the property is of a fluctuating value, as a mine or colliery for instance, the court is generally unwilling to risk a resale, and has refused an advance of 1,150*l*. upon 8,850*l*.: (*Williams v. Attenborough*, Turn. & Russ. 70; *Jeffery v. Smith*, 1 Cooper, N. R. 311.)

After the report is confirmed, the purchaser may apply by motion or notice for leave to pay his purchase-money into the bank, and to be let into possession. The payment must be an entire payment, although the lot be sold to joint purchasers (*Darkin v. Marye*, 1 Anstr. 22); and where interest is payable the same must be payable in full, without deducting the income tax: (*Holroyd v. Wyatt*, 1 De Gex & S. 125; *Dawson v. Dawson*, 11 Jur. 984, V. C. E.; *Humble v. Humble*, 12 Beav. 43.)

After report
confirmed pur-
chaser may
apply to pay
his purchase-
money, and to
be let into
possession.

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under an
Order of the
Court of
Chancery.

of the said cause, as by the certificate of the said Accountant-General, bearing date the day of now last past, and the receipt of one of the cashiers of the said bank thereunto annexed, and therewith filed in the office of the registrar of the said court, the payment of which said sum of 3,500*l.* in manner aforesaid, and that the same is in full for the absolute purchase of the fee simple in possession of the hereditaments and premises hereinafter described, and intended to be hereby granted and released, the said (*trustees*) do hereby respectively acknowledge, and therefrom and from every part thereof do hereby respectively acquit, release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors and administrators; THEY the said (*trustees*) DO, and each and every of them DOTH, by these presents, grant, release and convey unto the said (*purchaser*) and his heirs, ALL, &c. [DESCRIBE *parcels*, AND INSERT *general words*]; AND all the estate, right, title and interest, both legal and equitable, of them the said (*trustees*) therein.

Habendum.

9. TO HAVE AND TO HOLD (*short general description*), and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs, TO THE USE of the said (*purchaser*), his heirs and assigns for ever. [INSERT *covenant from trustees that they have done no act to incumber, ut ante*, No. V., clause 6, p. 61.]

IN WITNESS, &c.

No. XXXVIII.

CONVEYANCE OF AN EQUITY OF REDEMPTION. (a)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. That principal money in respect of mortgage is still due, but that all interest has been duly paid. 3. Of agreement to purchase equity of redemption. 4. Testatum. 5. Habendum to purchaser in fee. | <ol style="list-style-type: none"> 6. Qualified covenants from vendor that he has good right to release equity of redemption. 7. For quiet enjoyment and freedom from incumbrances. 8. For further assurance. 9. Further testatum, by which purchaser covenants to pay the mortgage debt, and to indemnify the vendor therefrom. |
|--|--|

1. THIS INDENTURE, made the day of A.D., 185 , Parties.
BETWEEN (*vendor owner of redemption*), of, &c., of the one part,

(a) Where an equity of redemption is purchased, the mortgage debt is considered as part of the purchase-money, and the *ad valorem* duty will become payable accordingly. Thus, if the mortgage debt be 2000*l.*, and the price to be paid for the equity of redemption 1000*l.*, the *ad valorem* stamp for the conveyance must be adapted to a purchase of the amount of 3000*l.* The words of the General Stamp Act (55 Geo. 3, c. 184), direct, "that where any land, or other property, shall be sold or conveyed subject to any mortgage or entire sum to be afterwards paid by the purchaser, such sum of money or debt shall be deemed the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect of which the said *ad valorem* duty is to be paid." Upon the construction of these words of the act, it was, until very recently, considered that the mortgage debt was in every instance to be treated either as forming the whole or part of the purchase-money; but in a recent case, the Court of Exchequer found an exception to this general rule, treating the terms "*to be paid by the purchaser*" in the above enactment, as applicable to those cases only in which the purchaser, in consideration of the conveyance of the estate, covenanted to discharge the mortgage debt, and did not comprehend such assurances as were altogether silent upon this head: (*Marquis of Chandos v. Commissioners of Inland Revenue*, 17 L. T. Rep. 128.) But very soon after the above decision, the statute, 16 & 17 Vict. c. 59, was passed for the express purpose of altering this law, by the 10th section of which, after reciting that by the said act passed in the fifty-fifth year of the reign of King George the Third, it is provided that where any property is sold and conveyed subject to any debt or sum of money to be afterwards paid by the purchaser, the same shall be deemed to be purchase or consideration

As to the proper stamps upon the conveyance of an equity of redemption.

No. XXXVIII. and (*purchaser*) of &c., of the other part. [RECITE mortgage in fee, *ut ante*, No. XIX., clause 2, p. 114.]

Conveyance
of an Equity of
Redemption.

That principal
money in respect
of mortgage is
still due, but
that all interest
has been duly
paid.

2. AND WHEREAS the said principal sum of £ still remains due and owing to the said (*mortgagee's name*), upon the said recited mortgage security, but all interest in respect of the same has been duly paid to the day of the date of these presents, as the said (*vendor*) doth hereby testify and declare.

Of agreement
to purchase
equity of
redemption.

3. AND WHEREAS the said (*purchaser*) has agreed to purchase the fee simple and inheritance of the said (*vendor*) in the equity of redemption of the said hereditaments and premises, free from all incumbrances, except the said recited mortgage and the principal moneys and interest thereby secured, at the price of £ the said (*purchaser*) agreeing to discharge the said mortgage debt and to indemnify the said (*vendor*) therefrom.

Testatum.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the sum of £ sterling, paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*) DOTH by these presents grant, release, and confirm unto the said (*purchaser*) and his heirs, ALL THAT the right and benefit or equity of redemption of him the said (*vendor*) of and in ALL, [DESCRIBE *parcels*; INSERT *general words*, and *all-deeds clause*, *ut ante*, No. I., clause 5, p. 45.]

money in respect whereof the said *ad valorem* duty charged upon the sale and conveyance of property is to be paid: and whereas it has been held and determined that the said *ad valorem* duty is payable in respect of any such sum or debt only where the purchaser is personally liable or bound or undertakes or agrees to pay the same or to indemnify the vendor against the same; and it is expedient to alter and amend the law in this respect: where any lands or other property shall be sold and conveyed subject to any mortgage, wadset, or bond, or other debt, or to any gross or entire sum of money, such sum of money or debt shall be deemed the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the said *ad valorem* duty shall be paid, notwithstanding the purchaser shall not be or become personally liable or shall not undertake or agree to pay the same or to indemnify the vendor or any person against the same, anything in any act or otherwise to the contrary notwithstanding.

5. TO HAVE AND TO HOLD the said (*short general description*) No. XXXVIII. and all and singular other the premises hereinbefore described and hereby granted and released, with their appurtenances (subject Conveyance of an Equity of Redemption. nevertheless to the said recited mortgage thereon, and the principal moneys and interest thereby secured) unto the said (*purchaser*) Habendum to purchaser in fee. and his heirs, TO THE USE of the said (*purchaser*), his heirs and assigns for ever. [INSERT *clause to debar widow of dower, ut ante*, No. I., clause 7, p. 48.]

6. AND the said (*vendor*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act done or permitted by him the said (*vendor*), or any person rightfully claiming under him to the contrary) HE the said (*vendor*), now hath in himself good right to convey the equity of redemption of the said hereditaments and premises hereby granted and released, with their appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents. Qualified covenants from vendor that he has good right to release equity of redemption.

7. AND FURTHER, that (notwithstanding any such act or thing as aforesaid) the same hereditaments and premises shall or may from time to time, and at all times hereafter, be held and enjoyed accordingly, without any lawful act, suit, eviction, ejection, interruption, molestation, or disturbance, of or by the said (*vendor*) or any other person or persons whomsoever rightfully claiming by, from, through, under, or in trust for him (excepting persons claiming in respect of the said hereinbefore recited mortgage security), and that freely, clearly, and absolutely released, exonerated, and discharged by the said (*vendor*), his heirs, executors, or administrators, from all former and other estates, rights, titles, liens, charges, and incumbrances (except the said recited mortgage security), made or created by the said (*vendor*), or any other person or persons whomsoever rightfully claiming under or in trust for him, and except as appears by these presents. For quiet enjoyment and freedom from incumbrances.

8. AND MOREOVER that the said (*vendor*), and all persons rightfully claiming any estate or interest in the said hereditaments and premises hereby granted and released under or in trust for him For further assurance.

No. XXXVIII. (except persons claiming in respect of the said recited mortgage), shall and will from time to time, and at all times hereafter (but *Conveyance of an Equity of Redemption.* subject nevertheless and without prejudice to the said recited mortgage security), at the request and costs of the said (*purchaser*), his heirs or assigns, make, do, acknowledge, enter into, execute and perfect all such further assurances, for the more perfectly or satisfactorily assuring and confirming the equity of redemption of the said hereditaments and premises hereby granted and released, with their appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns, according to the true intent and meaning of these presents, as the said (*purchaser*), his heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

Further testamentum, by which purchaser covenants to pay the mortgage debt, and to indemnify the vendor therefrom.

9. NOW THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, and for the purpose of indemnifying the said (*vendor*) from all claims or demands which may be made upon him in respect of the said hereinbefore recited mortgage security, HE the said (*purchaser*) doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*vendor*), his heirs, executors, and administrators, that he the said (*purchaser*) his heirs, executors, or administrators, shall and will pay off and discharge the said mortgage debt on £ , so charged on the said hereditaments and premises hereby granted and released as aforesaid, and all interest henceforth to accrue due thereon; and also shall and will from time to time and at all times hereafter save, defend, keep harmless and indemnified the said (*vendor*) his heirs, executors, and administrators, and his and their lands and tenements, goods and chattels, of and from the same, and all claims and demands in respect thereof.

IN WITNESS, &c.

No. XXXIX.

RELEASE OF AN EQUITY OF REDEMPTION FROM
MORTGAGOR TO MORTGAGEE.(a)

- | | |
|---|---|
| 1. Parties.
2. That principal money is still due, but that all interest has been paid.
3. Of contract to purchase equity of redemption. | 4. Testatum.
5. Habendum to mortgagee's trustee to dower uses, for the benefit of the mortgagee. |
|---|---|

1. THIS INDENTURE, made the day of A. D., 18 , Parties.
 BETWEEN (*mortgagor*) of, &c., of the first part, (*mortgagee*) of, &c.,
 of the second part, and (*mortgagee's trustee*) of the third part. (b)
 [RECITE *mortgage from mortgagor to mortgagee, ut ante*, No. XIX.,
 clause 2, p. 114.]

(a) Whatever opinions may formerly have prevailed, it is now clearly settled that the relationship of mortgagor and mortgagee does not preclude the latter from purchasing the equity of redemption: (*Skinner v. Stacey*, 1 Wils. 80; *Goodtitle v. Pope*, 7 T. R. 185; *Ex parte Marsh*, 1 Mad. Rep. 48.) The cases in which sales of this kind have seemingly been impeached, have been those in which the mortgagee has taken an undue advantage of his situation (*Gibbons v. Creed*, 2 Sch. & Lef. 214; *Webb v. Rorke*, *ib.* 660; *Hicks v. Cooke*, 4 Dow. 10, 28); or the mortgagee has been a trustee for sale, who is thereby disabled from selling to himself (*Downes v. Glazebrook*, 3 Mer. 200; see also *Hughes Pract. Sales*, 236, 2nd edit.), as he cannot possibly fill the character of both buyer and seller; still, this will not disable him from contracting with the mortgagor for the purchase of the equity of redemption. An assurance, in accordance with such contract, may be either made by a simple release by the mortgagor of his equity of redemption, or it may be conveyed to dower uses. In the latter case it will be necessary to convey through the medium of a trustee to uses, as in the above precedent, and the dower uses must be declared to arise out of the seisin of such trustee.

Practical observations.

(b) The *ad valorem* duty in this case must be paid as well on the 1,000*l.* already secured upon the mortgage, as upon the 500*l.* purchase-money; consequently a stamp adapted to a purchase of 1,500*l.* will be necessary. (See observations upon this subject, *ante*, p. 207, note (a).)

Ad valorem duty will be payable as well on the money secured by the mortgage as on the purchase money.

No. XXXIX.

*Conveyance
in Fee of the
Equity of
Redemption
from Mortgagor
to Mortgagee.*

That principal
money is still
due, but that
all interest has
been paid.

Of contract to
purchase equity
of redemption.

2. AND WHEREAS the said principal sum of 1,000*l.* is still due and owing to the said (*mortgagee*) upon his said recited mortgage security, but all interest for the same has been duly paid to the day of the date hereof, as the said (*mortgagee*) doth hereby admit and acknowledge.

3. AND WHEREAS the said (*mortgagee*) hath contracted with the said (*mortgagor*) for the purchase of the equity of redemption of the said hereditaments and premises for the price of 1,500*l.* out of which it has been agreed that the said (*mortgagee*) shall retain the sum of 1,000*l.* so due to him as aforesaid, in satisfaction of his said mortgage debt.)

Testatum.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the sum of 1,000*l.* sterling, so due and owing from the said (*mortgagor*) to the said (*mortgagee*), from the payment of which, and all claims and demands in respect whereof, the said (*mortgagee*) doth, by these presents, release, exonerate and discharge the said (*mortgagor*) his heirs, executors, administrators and assigns for ever; and also in consideration of the further sum of 500*l.* sterling, this day paid by the said (*mortgagee*) to the said (*mortgagor*), the receipt of which the said (*mortgagor*) hereby acknowledges, and therefrom doth by these presents release, exonerate and discharge the said (*mortgagee*), his heirs, executors, administrators and assigns for ever (which said two several sums of 1,000*l.* and 500*l.* make together the sum of 1,500*l.*, the purchase money of the said premises), and also in consideration of the sum of 10*s.* at the same time paid by the said (*mortgagee's trustee*) to the said (*mortgagor*) and (*mortgagee*), the receipt of which is hereby acknowledged; the said (*mortgagee*) DOTH by these presents grant, release, and convey, and the said (*mortgagor*) DOTH by these presents grant, release and confirm, unto the said (*mortgagee's trustee*), and his heirs, ALL, &c. [HERE DESCRIBE the parcels.] AND all rights, members and appurtenances whatsoever to the said hereditaments and premises belonging or appertaining; AND all the estate, right, title and interest, both legal and equitable, of them the said (*mortgagor*) and (*mortgagee*) therein.

Habendum to

5. TO HAVE AND TO HOLD the said (*short general description*)

and all and singular other the hereditaments and premises herein-
before described and hereby granted and released, with their
appurtenances, unto the said (*mortgagee's trustee*) and his heirs. [If
the property is to be limited to uses to bar dower, INSERT clause,
ante, No. I., clause 6, p. 46. If simply in fee, INSERT clause 3,
ante, No. III., p. 55, AND ADD, in either case, declaration to bar
widow of dower, ut ante, No. I., clause 7, p. 48, AND THEN ADD
qualified covenants for title, &c., ut ante, No. I., clauses 8 to 11
inclusive, pp. 48 to 50.]

No. XXXIX.

Conveyance
in Fee of the
Equity of
Redemption
from Mortgage
to Mortgagee.

mortgagee's
trustee to dower
uses, for the
benefit of the
mortgagee.

IN WITNESS, &c.

No. XL.

CONVEYANCE IN FEE OF CUSTOMARY TENEMENTS, HOLDEN
OF THE DUCHY OF CORNWALL. (a)

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital that the premises were heretofore of the tenure of customary freehold. 3. That trustee had been admitted tenant in trust for vendor. 4. That the customary premises have been converted into common socage tenure. | <ol style="list-style-type: none"> 5. Of contract to sell. 6. Testatum, by which trustee conveys and vendor confirms to purchaser, his heirs, &c. 7. Habendum, subject to the provisions of the statute 7 & 8 Vict. c. 105, respecting minerals, &c., to usual dower uses. |
|--|---|

Parties.

1. THIS INDENTURE, made the day of A.D., 18 ,
BETWEEN (*trustee for vendor*) of, &c., of the first part, (*vendor*) of
&c., of the second part, (*purchaser*) of &c., of the third part, and
(*purchaser's dower trustee*) of &c., of the fourth part.

Customary
tenure of the
ancient duchy
of Cornwall.

(a) These tenements are holden of certain manors, termed assessionable manors, of which the Duke of Cornwall is the lord, under a charter granted by King Edward the Third. The estates of the tenants are styled conventional tenements, and were held under grants made and renewed at the Assession Courts, once in seven years, upon surrender and admittance of the tenant, being considered to be held as customary estates of inheritance, with a perpetual right of renewal: (2 Hughes Pract. Sales, 63, 2nd edit.) Latterly, however, disputes arose between the officers of the duchy and the conventional tenants with respect to the minerals, for which, although undoubtedly the property of the Duke of Cornwall, his right to enter upon the tenements for the purpose of working the mines was disputed; and, in consequence of these misunderstandings, and, it seems, also some difference respecting the boundaries, no Assessionable Courts were held subsequently to the year 1833. At last commissioners were appointed to ascertain the rights of the different parties; and to carry out this important object, the act now under consideration was framed.

This act (7 & 8 Vict. c. 105), recites first the acts just before alluded to, and that it was expedient that the estates of the tenants in the conventional tenements should be converted into freehold, on the terms and conditions therein-after mentioned; and that the rights of the Duke of Cornwall and all other persons in respect of the mines, minerals, stone, and substrata of the said con-

2. WHEREAS the hereditaments and premises hereinafter described, and which are intended to be hereby granted and released, were heretofore lands of the tenure of customary free-

No. XL.

Conveyance of Customary Tenements, Parcel of the ancient Duchy of Cornwall, to a Purchaser in Fee, &c.

ventionary tenements should be established and regulated, which could not be effected without the aid and authority of Parliament.

It then proceeds to confirm the estates of the conventional tenements granted at the last Assession Court for the manors mentioned in the first schedule annexed to the act, and which, if duly renewed, would have been held as such conventional tenements continuously for sixty years, or more, from the 1st of May, 1844, and for the same estates and interests as the same would have been held if the grants thereof had been duly renewed; but subject to fines for renewal, rents, heriots, payments, fees and services; and subject to all existing rights of the Duke of Cornwall and his lessees, and other persons claiming under him with respect to mines, minerals, stones and substrata: (sect. 1.) It next proceeds to appoint commissioners to inquire and ascertain what lands and tenements in the several manors mentioned in the schedules annexed to the said act were held as conventional tenements, and the boundaries, identity and situation of all such tenements for the period therein set forth (sects. 2 to 31); and directs the commissioners, when they shall have made all such inquiries, to make an award in writing under their hands, and to annex to such award a map or maps, and thereby to distinguish, specify and determine what lands and tenements had been holden as conventional tenements within the said several manors respectively for the last sixty years: (sect. 31.) Such award is declared to be binding and conclusive on the Duke of Cornwall, and all persons whatsoever (sect. 40), and all and singular the tenements therein determined to be conventional, are made of freehold tenure, and to be for ever thenceforth held by the Duke of Cornwall in free and common socage of the manor of which the same tenements had theretofore been held, charged, however, with the payment to the Duke of Cornwall, as lord of such manors respectively, of all arrears of rents, fines, acknowledgments, heriots, fees, payments or services, and of such annual sum as should be directed to be payable thereout respectively, and that the Duke of Cornwall should have the same remedies for recovering the same as for rent reserved on a demise: (sect. 41.)

Recital that premises were heretofore of the tenure of customary freehold.

Conventional tenements converted into socage tenure by 7 & 8 Vict. c. 105.

Estates of conventional tenants confirmed.

Award of the commissioners declared to be binding on the Duke of Cornwall, and all conventional tenements made of freehold tenure.

This act does not, however, confirm conventional tenements first granted within sixty years (sect. 42); still it provides that, where such grants have been made, if it shall appear to the Duke of Cornwall that the circumstances under which such grant has been made are such as would reasonably and fairly entitle the person in possession, by virtue of such grant, to compensation for the loss of his beneficial interest in respect thereof, then it should be lawful for the Duke of Cornwall to grant or demise such conventional tenement to such person for such term, estate, or interest, and subject to such rents, reservations, conditions, and agreements as to the said Duke of Cornwall shall seem to be just and reasonable in reference to such circumstances as aforesaid; but so nevertheless that all tenements so granted and demised shall continue and be part and parcel of the demesne lands of the manor within which the same are situate, and shall be held of the same manor accordingly: (sect. 43.) The commissioners also are empowered to award lands in compensation of common of pasture or turbary: (sect. 44.) And immediately after the said award, every conventional tenement which should therewith be holden in free and common socage, shall stand limited and settled, upon such uses, and for such trusts, and such powers, provisoes, and agreements, as will most nearly correspond with the interests, uses, and trusts which, before the making of such award, were, according to the custom of the said manor, subsisting, or capable of taking effect in such conventional tenement; but so nevertheless that (subject and without prejudice to such estates, interests, uses, powers, provisoes and agreements, as shall be then subsisting and be capable of taking effect,) every such tenement, and every estate and interest therein, shall at all times after the making of the said

Act does not confirm conventional tenements first granted within sixty years, but Duke of Cornwall is empowered to grant or demise the same.

Commissioners empowered to award lands in compensation of common of pasture.

Tenements converted into socage tenure to be limited to such uses as would most

No. XL.

hold, holden of the manor of S—, parcel of the ancient Duchy of Cornwall, and stand on the court rolls of the said manor as No. , in S—.

*Conveyance
of Customary
Tenements,
Parcel of the
ancient Duchy
of Cornwall, to
a Purchaser in
Fee, &c.*

nearly corre-
spond with the
pre-existing
uses.

Mines, &c., to
belong to the
Duke of
Cornwall.

Duke of
Cornwall to
give one calendar
month's previous
notice of entry
(except upon
waste lands.)

All persons
except the Duke
of Cornwall to
give security for
surface damage.

Duke of
Cornwall not to
be liable to
surface damage,
nor is compen-
sation to be
made for damage
done to wastes.

Claims of the
Duchy, how
barred by the
Statutes of
Limitations.

Practical
remarks.

award, descend, devolve, be conveyed and assured, according to and in every respect subject to the laws according to which other tenements holden in free and common socage descend, devolve, are conveyed and assured, and subject; and that every such freehold tenement, and every estate and interest therein, shall be subject and liable to all claims and demands, if any, to which the conventional tenement out of which the same was converted was subject or liable immediately before such conversion, other than claims and demands by the Duke of Cornwall, as lord of the manor of which the same is held: (sect. 46.)

The same statute afterwards enacts that all mines and metallic minerals under the conventional lands are to belong to the Duke of Cornwall (sects. 53, 54), who is thereby empowered to enter and work them, making compensation for the damage of the surface, and for the use of stone and water (sect. 53), which compensation, in case of dispute, is to be settled by two justices, or by the vice-warden, at the option of the party liable: (sects. 56, 57.)

But where such entry is to be made for the purpose of working mines of any but the waste lands, the Duke of Cornwall is directed to give one calendar month's previous notice in writing of such intended entry to the occupier of such lands: (sect. 60.) And all lessees or other persons (other than the Duke of Cornwall,) who shall intend to enter as aforesaid other than on the waste may be compelled to give security for any surface damage he may do to the property: (sect. 61.)

But the Duke of Cornwall himself is not to be liable for any damage done by his lessees (sect. 66), nor is any compensation to be allowed for damage to the waste or demesne lands.

The Statutes of Limitations were in the most part considered inapplicable to the lands and possessions of the Duchy of Cornwall, to remedy which the above-mentioned statute of 7 & 8 Vict. enacts, that the claims of the Duke of Cornwall shall generally be barred at the end of sixty years (sect. 70), that his claims shall not be kept alive by putting a manor in charge of which the land shall be part (sect. 72), that his claims to mines shall be barred by the possession of the land and exclusively working the mines for sixty years (sect. 73), or by the absolute possession of the land independently of the Duke of Cornwall, for 100 years (sect. 74); but time, as to reversions, is not to begin to run until they fall into possession (sect. 76), nor to hereditaments which have been granted for limited estates until such estates fail: (sect. 77.) Neither will this act bar the Duke of Cornwall as to the property comprised in the award (sect. 81), nor affect the privilege of tinnors (sect. 84), nor extend to the royalties, liberties, offices, &c., let in convention, nor to navigable rivers, estuaries, branches of the sea, or sea shore (sect. 86), nor affect the act of 2 & 3 Will. 4, c. 100, for shortening the time required in claims of *modus decimandi*, &c.: (sect. 87.)

In several of the duchy manors of Cornwall, the custom has been to surrender to a trustee, who is admitted tenant in court, to hold in trust for the parties beneficially entitled. Now, as the act we have been just commenting upon, at the same time that it converts the conventional tenements into common socage tenure, also declares that they shall stand limited and settled to such uses, &c. as should most nearly correspond with the subsisting uses, &c., previous to the making such award, it seems to follow that the tenant in court will take the legal estate in such tenements, which he will hold in trust for the parties beneficially interested; consequently, he must be a concurring party in a conveyance to a purchaser. One advantage, however, in having the legal estate vested in a trustee is, that it prevents the consequences which the conversion of the customary tenements into socage tenure would otherwise have had with respect to the rights of dower of women married prior to 1834, the legal estate in the trustee preventing such legal right of dower from attaching; and any

3. AND WHEREAS, at a court held in and for the said manor of S—, (*trustee*) was admitted customary tenant to the said hereditaments and premises, IN TRUST for the said (*vendor*), his heirs and assigns. (*b*)

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Conveyance
of Customary
Tenements,
Parcel of the
ancient Duchy
of Cornwall, to
a Purchaser in
Fee, &c.

4. AND WHEREAS the said customary hereditaments and premises have been converted into lands of the tenure of free and common socage, to be held of the Duke of Cornwall under and by virtue of an act passed in the 7th and 8th years of the reign of Her present Majesty Queen Victoria, and an award in pursuance thereof, dated on or about the 17th day of January, 1846, subject to the provisions and exceptions in the same act respectively contained, and to the payment of the annual sum in the said award mentioned.

That trustee
had been admitted
tenant in
trust for vendor.

That the cus-
tomary premises
have been
converted into
common socage
tenure.

5. AND WHEREAS the said (*vendor*) hath agreed to sell the said hereditaments and premises in fee-simple in possession, free from all incumbrances, to the said (*purchaser*) for the sum of 3,500*l.*, and for the purpose of perfecting the assurance of the same, the said (*trustee*) (*c*) hath agreed to concur in the conveyance thereof, in manner hereinafter appearing.

Of contract to
sell.

6. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the sum of 3,500*l.* sterling, paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth by these presents acquit, release,

Testatum, by
which trustee
conveys, and
vendor confirms
to purchaser,
his heirs, &c.

equitable right to dower to which a wife is entitled under the late Dower Act (3 & 4 Will. 4, c. 105, s. 2), the husband has the power of defeating by any disposition he may think proper to make of the property, or even by a simple declaration to that effect, either by deed, or by will: (see sects. 4 to 7 inclusive.)

(*b*) If the trustee be dead, and his trust estate has descended upon his heir, add here—

“AND WHEREAS the said (*trustee*) died on or about the day of in the year 18, upon whose decease the said hereditaments and premises descended, according to the custom of the said manor, upon (*heir*), as his eldest son and heir-at-law.”

Recital of
trustee's death,
and of the
descent of the
legal estate upon
his heir.

(*c*) If the trustee be dead, substitute—

(“*heir of trustee.*”)

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*Conveyance
of Customary
Tenements,
Parcel of the
ancient Duchy
of Cornwall, to
a Purchaser in
Fee, &c.*

exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, and also in consideration of the sum of 10s. sterling at the same time paid by the said (*purchaser*) to the said (*trustee*), the receipt whereof is hereby acknowledged, HE the said (*trustee*), at the request and by the direction of the said (*vendor*), (testified by his being a party hereto and concurring herein) DOTH by these presents grant, release and convey, and the said (*vendor*) DOTH by these presents grant, release, ratify and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*; INSERT *general words*; *all-estate clause*, and *all-deeds clause*, *ut ante*, No. I., clause 5, p. 45.]

Habendum,
subject to the
provisions of the
statute 7 & 8
Vict. c. 105,
respecting
minerals, &c.,
to usual dower
uses.

7. TO HAVE AND TO HOLD the said and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs (but subject to the provisions in the said hereinbefore recited act respecting the mines and metallic minerals, and the annual sum by the said award made payable.) [HERE INSERT *dower uses*, and *clause to bar widow of dower*, *ut ante*, No. I., clauses 6, 7, pp. 46, 48.](*d*)

IN WITNESS, &c.

(*d*) Or if the limitation is to be simply in fee, add—

“TO THE USE of the said (*vendor*), his heirs and assigns for ever.”

No. XLI.

CONVEYANCE BY TENANT BY THE CURTESY OF HIS LIFE
ESTATE. (a)

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of vendor's marriage. 3. That subsequently to the marriage the property descended on the wife. 4. That there was issue of the marriage born alive. 5. Of death of wife, whereby vendor became seised as tenant by the curtesy. | <ol style="list-style-type: none"> 6. Of contract. 7. Testatum. 8. Habendum to purchaser for the life of vendor. 9. Covenant from vendor that he has good right to convey. 10. For quiet enjoyment and freedom from incumbrances. 11. For further assurance. |
|---|--|

1. THIS INDENTURE, made the day of A.D., 185 , Parties.
BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*), of,
&c., of the other part.

(a) There are four requisites necessary to make a tenancy by the curtesy; As to the marriage; seisin of the wife; issue; and death of the wife: (Co. Litt. 38.) The marriage and marriage must be canonical and legal; and the seisin of the wife must be an seisin of the actual seisin or possession of the lands—not a bare right to possess, which is a wife. seisin in law, but an actual possession, which is seisin in deed. And therefore a man shall not be tenant by the curtesy of a remainder or reversion. But of some incorporeal hereditaments a man may be tenant by the curtesy, though there may be no actual seisin of the wife; as, in case of an advowson, where the church has not become void in the lifetime of the wife, which a man may hold by the curtesy, because it is impossible ever to have actual seisin of it and *impotentia excusant legem*: (Co. Litt. 29; 2 Bla. Com. 126.)

Some persons have a wrong notion that not only is it necessary the issue The issue must should be born alive, but also that it must be heard to cry, but that is a be born alive mistake. Crying, indeed, is the *strongest* evidence of its having been born during mother's alive, but it is not the *only* evidence (Dy. 25; 1 Rep. 34.) The issue must be lifetime. born also during the life of the mother, for if the mother dies in labour, and the Caesarean operation is performed, the husband in this case will not be tenant by the curtesy; because at the instant of the mother's death he was clearly not entitled, as having no issue born, but the land descended to the

No. XLI.

Conveyance
by Tenant
by the Curtesy
to the immediate
Reversioner,
with usual
Covenants for
Title.

Recital of
vendor's
marriage.
That subse-
quently to
the marriage
the property
descended on
the wife.

That there
was issue of
the marriage
born alive.

2. WHEREAS the said (*vendor*), on or about the 24th day of June, in the year 1825, intermarried with (*A. B.*), his late deceased wife.

3. AND WHEREAS the said (*A. B.*), during the time of her said marriage, became entitled to the hereditaments and premises hereinafter described, as the only surviving niece and sole heiress of law of *R. S.*, late of —, Esquire deceased, who died intestate as to his real estate on or about the 2nd day of September, in the year 1835.

4. AND WHEREAS there was issue of the said marriage, an only son, who was born alive and baptized in the parish church of *B.*, in the county of *C.*, but who died shortly afterwards.

child while it was yet in his mother's womb; and the estate being once so vested, shall not afterwards be taken from him: (Co. Litt. 29.)

To constitute a
tenancy by the
curtesy, the
issue born must
be capable of
inheriting.

Is is also requisite that the issue born in such as is capable of inheriting his mother's estate. Therefore, if a woman be tenant in tail *male*, and hath only a daughter born, the husband is not thereby entitled to be tenant by the curtesy; because such issue female can never inherit the estate in tail male. And this seems to be the principal reason why the husband cannot be tenant by the curtesy of any lands of which the wife was not actually seised, because, in order to entitle himself to the estate, he must have begotten issue that may be heir of the wife, but no one, by the standing rule of law, can be heir of the ancestor of any land whereof the ancestor was not actually seised; and therefore as the husband hath never begotten any issue that can be heir to those lands, he shall not be tenant of them by the curtesy. And hence we may observe with how much nicety and consideration the old rules of law were framed, and how closely they are connected and interwoven with one another, supporting, illustrating, and demonstrating one another. The time when the issue was born is immaterial, provided it were during the coverture; for whether it were before or after the wife's seisin of the lands, whether it be living or dead at the time of the seisin, or at the time of the wife's decease, the husband shall be tenant by the curtesy. The husband, by the birth of the child, becomes (as was before observed) tenant by the curtesy *initiate*, and may do many acts to charge the lands, but his estate is not *consummate* until the death of the wife; which is the fourth and last requisite to make a tenant by the curtesy: (2 Bla. Com. 126, 127; Co. Litt. 40.)

Curtesy will
attach upon an
equitable as
well as upon a
legal estate.

A tenancy by the curtesy will attach though the inheritance of the wife be a trust estate (*Watts v. Ball*, 1 P. Wms. 108; *Chaplin v. Chaplin*, 3 P. Wms. 234) or any equity of redemption (*Casborne v. Scarfe*, 1 Atk. 603), in which respect it differs from an estate in dower, which, until the recent Dower Act (3 & 4 Vict. c. 105), could only have arisen out of a legal estate (3 P. Wms. 299; 1 Bro. 326.) Neither will the interposition of a term of years between a life estate limited to the wife, and the fee which is also vested in her, deprive the husband of his curtesy; for the possession of the tenant for years in such case is considered as the possession of the wife: (*De Grey v. Richardson*, 3 Atk. 469.)

Gavelkind.

In the case of gavelkind lands, it is not necessary that any issue should be born alive to entitle the husband to his curtesy (Co. Litt. 30; 2 Bla. Com. 128); but he is only entitled to a moiety of his wife's lands, and this he forfeits in case he marries again: (Rob. Gav. book 2, c. 1.)

5. AND WHEREAS the said (*A. B.*) died on or about the 2nd day of May last, whereupon the said (*vendor*) became and is now seised of, or well and sufficiently entitled to, the said hereditaments and premises, with their appurtenances, for and during the term of his natural life, as tenant by the curtesy of England.

No. XLI.

Conveyance
by Tenant
by the Curtesy
to the immediate
Reversioner,
with usual
Covenants for
Title.

6. AND WHEREAS the said (*purchaser*) hath agreed with the said (*vendor*), for the purchase of his estate and interest in the said hereditaments and premises for the sum of 3,565*l.*

Of death of
wife, whereby
vendor became
seised as tenant
by the curtesy.
Of contract.

7. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of 3,565*l.* sterling, paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*), DOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c. [DESCRIBE *parcels*, AND INSERT *general words*.] AND all the estate, right, title and interest, both legal and equitable, of him the said (*vendor*) therein.

Testatum.

8. TO HAVE AND TO HOLD (*short general description*), and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns, for and during the natural life of the said (*vendor*.)

Habendum to
purchaser for
the life of
vendor.

9. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*) and his heirs, that (notwithstanding any act, deed, matter or thing done or permitted by the said (*vendor*) to the contrary) the said (*vendor*) now hath in himself good right, full power, and absolute authority to grant and release the said hereditaments and premises, in manner aforesaid, according to the true intent and meaning of these presents.

Covenant from
vendor that he
has good right
to convey.

10. AND ALSO, that (notwithstanding any such act, deed,

For quiet
enjoyment,

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*Conveyance
by Tenant
by the Curtesy
to the immediate
Reversioner,
with usual
Covenants for
Title.*

freedom from
incumbrances.

matter or thing as aforesaid,) the said hereditaments and premises shall, from time to time and at all times, be peaceably held and enjoyed accordingly, without let, suit, eviction, ejection, interruption, molestation or denial, of, from or by the said (*vendor*), or any other person or persons whomsoever, rightfully claiming under or in trust for him; AND that freely, clearly and absolutely indemnified by the said (*vendor*), his heirs, executors or administrators, of, from and against all former and other estates, rights, titles, liens, charges and incumbrances whatsoever, made, created, occasioned or suffered by the said (*vendor*), or any other person or persons whomsoever rightfully claiming under or in trust for him, or by or through his acts, deeds, defaults, privity or procurement.

For further
assurance.

11. AND MOREOVER, that the said (*vendor*), and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments or any part thereof, under or in trust for him, shall and will, from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his heirs or assigns, enter into, execute and perfect all such further acts, deeds, conveyances and assurances whatsoever, for the further, better, or more perfectly or satisfactorily granting, releasing and confirming, or otherwise assuring the said hereditaments and premises, or any part of the same with their appurtenances, to the use of the (*purchaser*), his heirs and assigns, during all the then remainder of the natural life of the said (*vendor*), according to the true intent and meaning of these presents as the said (*purchaser*), his heirs or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed.

IN WITNESS, &c.

No. XLII.

GRANT FOR THE PURPOSE OF EFFECTING AN EXCHANGE,
WHERE CONSIDERATION-MONEY IS PAID FOR OWELTY
OF PARTITION. (a)

- | | |
|--|--|
| 1. Parties. | 4. Recital of contract to exchange. |
| 2. Recital of conveyance of property intended to be given in exchange. | 5. Testatum, whereby premises are granted in exchange. |
| 3. Of conveyance of premises intended to be taken in exchange. | 6. Habendum in exchange in fee. |

I. THIS INDENTURE, made the day of A.D. 18 , Parties.
BETWEEN (*grantor*) of, &c., of the one part, and (*grantee*) of, &c.,
of the other part.

(a) An exchange at common law is a mutual grant of equal interests—the one in consideration of the other: (Shep. Touch. 16; 2 Bla. Com. 323.) In a conveyance of this kind, no livery of seisin was required (Co. Litt. 506; Perk. s. 285), the assurance being perfected by the entry of both parties, which, indeed, is indispensable to the validity of the assurance; so that if either party were to die before such entry be made, the exchange must necessarily become inoperative: (see Butler's note to Co. Litt. 276.) An exchange can only be made between two parties, though the number of persons of which such parties consist is immaterial; the estates must also be of the same tenure, for freehold cannot be exchanged for copyhold or leasehold property, or *vice versa*: the estates which the parties take must be of the same kind, for a tenant in fee-simple cannot exchange with a tenant in tail, or for life. The foundation of the assurance at common law is a mutuality of interests, and an implied warranty which engenders a right of entry in the case of eviction: (Shep. Touch. 290; Finch L. 27; Shep. Pract. Com. 2; 2 Hughes Pract. Sales, 250, 251.) But now by stat. 8 & 9 Vict. c. 106, it is enacted, that an exchange made after the 1st day of October, 1845, of any tenements or hereditaments, shall not imply any condition of law (sect. 4); but as it still leaves the equitable doctrine untouched, by which, after the mutual conveyances, one estate may be rendered liable to the incumbrances of the other, it has been justly remarked, that a greater degree of practical inconvenience arises out of this equity, than any which formerly existed from the pre-existing form of exchange, which had, in fact, nearly become obsolete: (see Browell's Real Property Statutes, 276.) In an exchange at common law, it was not formerly necessary that the assurance

Of exchanges at
common law.

No. XLII.

*Grant for the
purpose
of effecting an
Exchange where
Consideration
Money is paid
for Ovelty of
Partition.*

Recital of
conveyance of
property in-
tended to be
given in
exchange.

Of conveyance
of premises
intended to be
taken in
exchange.

Recital of
contract to
exchange.

Testatum
whereby

Modern as-
surances by way
of exchange.

2. WHEREAS by indentures of lease and release bearing date respectively on or about the and days of in the year 1838, the indenture of release being made between (*A.B.*) of the one part, and the said (*grantor*) of the other part; the hereditaments and premises hereinafter described, and intended to be granted in exchange for the hereditaments and premises secondly hereinafter described, were conveyed and assured unto and to the use of the said (*grantor*), his heirs and assigns for ever.

3. AND WHEREAS by indenture of appointment, bearing date on or about the day of 1841, and made between (*R.S.*), therein described, of the one part, and the said (*grantee*) of the other part, the hereditaments and premises secondly hereinafter described, and intended to be granted in exchange for the hereditaments firstly hereinafter described were, by an indenture bearing even date herewith, appointed and assured unto and to the use of the said (*grantor*), his heirs and assigns for ever.

4. AND WHEREAS the said (*grantor*) and (*grantee*) have agreed to exchange their respective hereditaments and premises, and as it appears that the hereditaments of the said (*grantor*) are of greater value than those of the said (*grantee*), the said (*grantor*) has agreed to pay the said (*grantee*) the sum of 200*l.* for equality of exchange.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of

should have been made by deed, unless the subject of it lay in grant, or was situate in different counties. In other cases a mere note in writing would have been sufficient. It is, however, now enacted, by the stat. 8 & 9 Vict. c. 106, just before referred to, that an exchange of any tenements or hereditaments, not being copyholds, made after the 31st of October, 1805, shall be void at law, unless made by deed.

In consequence of the many inconveniences attending the assurance by way of exchange at common law, it is rarely resorted to in modern times; the object of it having been usually effected by mutual releases, as in the above form, the one being expressed to be made in pursuance of the other, instead of making each a pecuniary consideration for the whole value; not only because it describes the nature of the transaction with a greater degree of accuracy, but, what is often a highly important matter, considering the present high scale of stamp duties, it saves the whole, or a greater portion of the *ad valorem* duty which would otherwise attach on each conveyance; for if no money is paid for equality of exchange, or if the money so paid does not exceed 300*l.*, then a common deed stamp (1*l.* 15*s.*) will be sufficient to cover it. But if the money so paid amounts to or exceeds 300*l.*, then an *ad valorem* duty, the same as on purchases, to the amount of the money so paid, will become requisite.

the said recited contract, and for the purpose of effecting such exchange, and in consideration of the said grant made by way of exchange by the said (*grantee*) to the said (*grantor*), by the said indenture bearing even date herewith, and also in consideration of the sum of 200*l.* sterling, for equality of exchange, paid by the said (*grantee*) to the said (*grantor*) on the execution hereof, the receipt of which the said (*grantor*) hereby acknowledges, and therefrom doth release and for ever discharge the said (*grantee*), his heirs, executors, administrators and assigns, HE the said (*grantor*) DOTII by these presents grant, release and confirm unto the said (*grantee*) and his heirs, ALL, &c. [DESCRIBE parcels, AND INSERT general words]; AND all-estate clause, and all-deeds clause, *ut ante*, No. I., clause 5, p. 45.]

No. XLII.

Grant for the purpose of effecting an Exchange where Consideration Money is paid for Ovelly of Partition.

premises are granted in exchange.

6. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*grantee*) and his heirs, TO THE USE of the said (*grantee*), his heirs and assigns for ever, IN LIEU OF, and in EXCHANGE FOR ALL, &c. [DESCRIBE parcels given in exchange], being the lands given and conveyed and assured by the said (*grantee*) to the said (*grantor*), by the said indenture bearing even date with these presents, in exchange for the said hereditaments and premises hereby given, granted and conveyed. [INSERT qualified covenant for title, &c., from grantor, *ut ante*, No. III., clauses 5, 6, 7, but omitting that portion which relates to acts of ancestors or testators.]

Habendum, in exchange in fee.

IN WITNESS, &c.

STAMP DUTIES ON PURCHASE DEEDS.

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As to the
ad valorem
duties upon
conveyances.

The *ad valorem* duties charged upon conveyances by the act 48 Geo. 3, c. 149, after undergoing some alterations by the statute 53 Geo. 3, c. 108, were all repealed by the General Stamp Act (55 Geo. 3, c. 184), and augmented duties granted in their stead. By the last-mentioned act, the *ad valorem* duty commenced at 10s. on purchase-moneys amounting to less than 20*l.*, increasing to 1,000*l.* where the consideration money amounted to 100,000*l.* or upwards; beyond which there was no increased duty. The duties on conveyances, like those on mortgages and bonds, were unequally imposed, the heaviest amount in proportion to value being charged upon the smaller sums; but now, under the new Stamp Act (13 & 14 Vict. c. 97), a graduated scale of duties is created, commencing at 2*s.* 6*d.* where the consideration money does not exceed 25*l.*, and so for every further sum exceeding 25*l.*, until it reaches the sum of 100*l.*, and then for every succeeding 100*l.*, or fractional part of 100*l.*, a duty of 10*s.*, without any limit whatever.

The following is a Comparative Table showing a scale of the Old and New Stamp Duties on Conveyances:—

OLD SCALE.	Old Duty thereon.	NEW SCALE.	New Duty thereon.
	£ s. d.		£ s. d.
Under 20 <i>l.</i>	0 10 0 }	Not exceeding 25 <i>l.</i>	0 2 6
20 <i>l.</i> and under 25 <i>l.</i>	1 0 0 }	Exceeding 25 <i>l.</i> and not exceeding 50 <i>l.</i>	0 5 0
25 " 50	1 0 0	" 50 " 75	0 7 6
50 " 75	1 10 0	" 75 " 100	0 10 0
75 " 100	1 10 0	" 100 " 125	0 12 6
100 " 125	1 10 0	" 125 " 150	0 15 0
125 " 150	1 10 0	" 150 " 175	0 17 6
150 " 175	2 0 0	" 175 " 200	1 0 0
175 " 200	2 0 0	" 200 " 225	1 2 6
200 " 225	2 0 0	" 225 " 250	1 5 0
225 " 250	2 0 0	" 250 " 275	1 7 6
250 " 275	2 0 0	" 275 " 300	1 10 0
275 " 300	2 0 0	" 300 " 350	1 15 0
300 " 350	3 0 0	" 350 " 400	2 0 0
350 " 400	3 0 0	" 400 " 450	2 5 0
400 " 450	3 0 0	" 450 " 500	2 10 0
450 " 500	3 0 0	" 500 " 550	2 15 0
500 " 550	6 0 0	" 550 " 600	3 0 0
550 " 600	6 0 0		
600 " 700	6 0 0		
700 " 800	9 0 0		
800 " 900	9 0 0		
900 " 1,000	9 0 0		
Above 1,000 <i>l.</i> the old duty is about 1 <i>l.</i> per cent. up to 100,000 <i>l.</i> , at which sum the scale stops.		Exceeding 600 <i>l.</i> , for every hundred, and } also for any fractional part of 100 <i>l.</i> ... }	0 10 0

Under the General Stamp Act (55 Geo. 3, c. 184), there was a difference between the mode in which the duties were assessed in conveyances and mortgages. In the former case the amount of duty made payable was on sums *not amounting to*, and in the latter, on sums *not exceeding*, a specified sum; so that in the first instance, if the consideration was 50*l.*, an *ad valorem* stamp adapted to 150*l.* would have been required, whereas, in the latter, a stamp adapted to 50*l.* would have sufficed. This distinction is abolished by the new Stamp Act (13 & 14 Vict. c. 97), and the duties are now payable in both instances in respect of sums not exceeding the specified amount, and therefore covering the sum specified.

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Difference between the mode of assessing the *ad valorem* duties on mortgages and conveyances under the old system.

The terms descriptive of the mode of conveyance or transmission of the property upon which the *ad valorem* duty is to attach under the new Stamp Act (13 & 14 Vict. c. 97), are then set out in the schedule as "CONVEYANCE, whether grant, disposition, lease, assignment, transfer, release, renunciation, or of any other kind or description whatsoever, upon the sale of any lands, tenements, rents, annuities, or other property, real or personal, heritable or moveable, or of any right, title, interest, or claim in, to, out of, or upon any lands, tenements, rents, annuities, or other property (that is to say), for and in respect of the principal or only deed or instrument, or writing, whereby the lands, or other things sold, shall be granted, leased, assigned, transferred, released, renounced, or otherwise conveyed to or vested in the purchaser or purchasers, or any person or persons, by his or their direction."

Modes of assurances included under the head of Conveyance, Renunciation, &c.

It is also directed, "that the purchase or consideration money shall be truly expressed and set forth in words at length in or upon every such principal or only deed of conveyance; and where such consideration money shall consist either wholly or in part of any stock or security, the value thereof to be ascertained as thereafter mentioned, shall also be truly expressed and set forth in manner aforesaid, in or upon every such deed or instrument; and such value shall be deemed and taken to be the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect of which the *ad valorem* duty shall be charged."

How the consideration money is to be expressed and set forth.

With respect to the purchase or consideration money being set out in the deed, it is enacted by a statute prior to the act 55 Geo. 3, c. 184, but incorporated into it (48 Geo. 3, c. 149, as also with the act now under consideration), that in all cases of sales the full consideration money, which shall be directly or indirectly paid for the same, shall be truly expressed in words at length in the conveyance thereof, or in default the purchaser and seller shall forfeit 50*l.*, and be charged with five times the amount of duty due beyond what was actually paid, which quintuple duty shall be a debt to His Majesty, and be recoverable accordingly; and parties liable to such penalties, informing against others, shall be indemnified and rewarded; and further, where the consideration shall not be fully set forth, the purchaser may recover back so much thereof as shall not be truly set out: (sects. 22, 23.)

How the consideration money is to be set forth in the deed of conveyance.

In addition to these penalties, the attorney, conveyancer, or other person preparing such deed, on which the consideration is not truly expressed, will incur a penalty of 500*l.*, and be disqualified to practice or to hold any office. Similar penalties are also inflicted on stewards of manors and others, for preparing copyhold assurances; and stewards and tenants of manors, not actually preparing, but aiding and assisting in the passing of any copyhold assurance wherein the true consideration is

Penalties for not setting forth the consideration truly.

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upon the Stamp
Laws.

Consideration
being untruly
set forth will not
invalidate the
instrument.

not fully set out, are liable to be fined 50*l.* for every offence: (sects. 30 to 34.)

But notwithstanding the act 48 Geo. 3 directs that the consideration money shall be lawfully expressed, the assurance itself will not be avoided by such consideration being untruly set out. The act in fact seems to have carefully guarded against this consequence; for all it says is, that in case the purchase-money shall not be fully expressed the seller and purchaser shall forfeit 50*l.*: (*Robinson v. Macdonnell*, 5 Mau. & Selw. 234.) The Legislature clearly intended, by imposing a heavy penalty on not setting out the full consideration, to punish the individuals actually guilty of the fraud: but to have avoided the instrument on that account must have worked a great injustice upon many innocent persons (*Doe dem. Higginbottom v. Hobson*, 3 Dow. & Ry. 188; *Duck v. Braddyll*, 13 Pri. 496); for, if this construction was allowed, a purchaser's title might be defeated by evidence of a larger sum having been paid than appears on the face of the deed, notwithstanding he may be totally ignorant of the circumstance: (*Doe dem. Kettle v. Lewis*, 10 B. & C. 676.)

Where the sum
bonâ fide paid is
truly expressed
no penalty will
be incurred.

And where the sum actually and *bonâ fide* paid as the consideration is expressed, no penalty will be incurred, notwithstanding it should be less than the sum actually agreed upon, provided it be the amount which is finally agreed to be paid, and which actually passes between the parties, although, in reality, it should be proved that such reduction was made for the express purpose of evading the higher rate of stamp duty: (*Sheppard v. Hall*, 3 Camp. N. P. C. 20.)

How the *ad
valorem* duty is
payable upon the
purchase of an
equity of
redemption.

Where an equity of redemption is purchased, the mortgage debt was considered in all cases to form part of the purchase-money upon which the *ad valorem* duty is payable, so that where the mortgage debt was 2,000*l.* and the price of the equity of redemption 1,000*l.*, the *ad valorem* stamp must have been adapted to a conveyance where the consideration is 3,000*l.*, without any reference as to the mode by which such conveyance was penned. The words of the General Stamp Act (55 Geo. 3, c. 184), and which is still in force, so far as regards conveyances of this kind, direct "that where any land or other property shall be sold or conveyed, subject to any mortgage or entire sum to be afterwards paid by the purchaser, such sum of money or debt shall be deemed the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect of which the said *ad valorem* duty is to be paid." But, in a recent case, upon an appeal from the determination of the Commissioners of Inland Revenue, under the provisions of the new Stamp Act (13 & 14 Vict. c. 97), (*Marquis of Chandos v. Commissioners of Inland Revenue*, 17 L. T. Rep. 128), the Court of Exchequer construed the above clause very liberally, treating the terms, "to be paid by the purchaser," as applicable to those cases only in which the purchaser, in consideration of the conveyance of the estate, covenanted to discharge the mortgage debt, and did not comprehend such assurances as were altogether silent upon this head. According to the doctrine, therefore, which is established by the above decision, the mode in which the deed of conveyance is penned, is that by which the amount of stamp duty is to be regulated. If, therefore, as is the usual practice in conveyances of this nature, the purchaser covenants to pay off the mortgage debt, and to indemnify the mortgagor therefrom, then the mortgage debt will form portion of the consideration money, and the *ad valorem* duty must be paid upon it accordingly; but if, on the other

hand (or at any rate, so long as the doctrine laid down in the case above alluded to remains unoverruled), there is a simple conveyance to a purchaser without any covenant or undertaking on his part to pay off the mortgage debt, an *ad valorem* duty will attach only on the sum paid to the vendor for the purchase of the equity of redemption. To meet this case, the statute 16 & 17 Vict. c. 59, after reciting that "by the said act passed in the 55th year of the reign of King George the Third, it is provided that where any property is sold or conveyed, subject to any debt or sum of money to be afterwards paid by the purchaser, the same shall be deemed to be the purchase or consideration money, in respect whereof the said *ad valorem* duty charged upon the sale and conveyance of property is to be paid; and also reciting that it had been held and determined that the said *ad valorem* duty is payable in respect of any such sum or debt only where the purchaser is personally liable or bound, or undertakes or agrees to pay the same, or to indemnify the vendor against the same, and that it is expedient to alter and amend the law in this respect," proceeds to enact, that, "where any lands or other property shall be sold and conveyed subject to any mortgage, wadset, or bond, or other debt, or to any gross or entire sum of money, such sum of money or debt shall be considered as the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the said *ad valorem* duty shall be paid, notwithstanding the purchaser shall not be or become personally liable, or shall not undertake or agree to pay the same, or to indemnify the vendor or any person against the same:" (sect. 10.)

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Stat. 16 & 17 Vict. c. 54, s. 10.

The *ad valorem* duty only attaches to a pecuniary, and not upon a mere nominal consideration; as, for example, where a conveyance is expressed to be made in consideration of 10s., 5s., or the like; a sum which is expressed to be, but which it is well known is never, actually paid. An instrument of the latter kind, therefore, comes under the head of "deed not otherwise charged" under the provisions of the General Stamp Act (55 Geo. 3, c. 184), and will be chargeable with the common deed stamp duty of 1*l.* 15*s.* A common deed stamp would formerly have sufficed where the grant of an annuity or rent-charge formed the consideration of the conveyance; but now by the statute 16 & 17 Vict. c. 63, a conveyance of any kind or description whatsoever in England or Ireland, and charter disposition or contract containing the first original constitution of feu, and ground annual rights in Scotland (not being a lease or tack for years), in consideration of any annual sum payable in perpetuity, or for any indefinite period, where the fee-farm or other rent, feu duty, ground, annual or otherwise.

No *ad valorem* duty attaches upon mere nominal pecuniary considerations.

What stamps are necessary when an annuity forms the subject of conveyance.

£ s. d.

Where the sum thereby reserved, secured, or made payable shall not exceed 20*s.* ... 0 2 6

And where the same shall exceed 20*s.* and shall not exceed 12*l.* then for every 20*s.* and fractional part of 20*s.* of such annual sum... 0 2 6

And where the same shall exceed 12*l.* and shall not exceed 24*l.*, then for every 40*s.* and fractional part of 40*s.*, of such annual sum ... 0 5 0

And where the same shall exceed 24*l.*, then for every 4*l.*, and for every fractional part of 4*l.* of such annual sum 0 10 0

And by a still more recent enactment, 17 Vict. c. 83, where any conveyance, charter, disposition, or contract described in the schedule to this

Deeds made for several valuable

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considerations
to be chargeable
in respect of
each.

act, shall be made partly in consideration of such annual sum as in the said schedule is mentioned, and partly in consideration of a sum of money, or stock, as mentioned under the head or title of Conveyance, in the schedule to the said act of the 13th & 14th years of Her Majesty, such conveyance, charter, disposition or contract shall be chargeable with the *ad valorem* duties granted by the said acts respectively in respect of each of the said considerations; and in any case where any deed or instrument shall be chargeable with any *ad valorem* duty in respect of any sum of money yearly or in gross, or any stock or security therein mentioned, shall be made; also for any further or other valuable consideration, such deed or instrument shall be chargeable (except where express provision to the contrary is or shall be made in any Act of Parliament) with such stamp duty as any separate deed or instrument made for such last consideration only would be chargeable with, except progressive duty: (sect. 16.)

No *ad valorem*
duty chargeable
upon a covenant
to lay out
money in
buildings or
improvements.

As to assign-
ments by sheriff
—Conveyances
by assignees of
bankrupts, &c.

A covenant, by which a lessee undertakes to lay out a specified sum of money in buildings or improvements upon the demised premises, is not a consideration upon which an *ad valorem* duty will attach, either under the old law or the new: (*Nicholls v. Cross*, 14 Mees. & Wels. 42.)

But an assignment to a purchaser by the sheriff, of property sold under an execution, is liable to the same *ad valorem* duty as in the case of sales under ordinary circumstances (*Lessee of Nangle v. Ahern*, 3 Ir. Law Rep. 31), as will also conveyances by the assignees of bankrupts or insolvent debtors; for the exemptions from stamp duties, under the Bankrupt and Insolvent Acts, do not relate to conveyances or assignments of the bankrupt's landed property to purchasers, although it seems that these exemptions do extend to a mere agreement entered into with a purchaser for such conveyance or assignment; an instrument of the latter description being considered as relating solely to the estate of the bankrupt (*Flather v. Stubbs*, 2 Gale & Dav. 190); in which respect the law is confirmed by the recent Stamp Act (13 & 14 Vict. c. 97, s. 3), which expressly provides, that nothing in that act shall extend to charge with stamp duty any deed or instrument which, by any act or acts then in force, is expressly exempted from all stamp duty.

Where lands of
different
tenures,
or held under
different titles
are contracted
to be sold.

Under the provisions of the General Stamp Act (55 Geo. 3, c. 184), which are also embodied in the new Stamp Act (13 & 14 Vict. c. 97), where lands of different tenures, or held under different titles, are contracted to be sold at one entire price for the whole, is conveyed to the purchaser in separate parcels by different deeds, the purchase money may be apportioned in such manner as the parties think fit, provided a distinct price for each parcel is set forth in the principal deed of conveyance, which is chargeable only with an *ad valorem* duty on the actual amount of consideration money therein set forth. By a dexterous management in adjusting the apportionment of the purchase-money, a considerable saving of stamp duty has been effected under the old scale of stamp duties, which cannot be done under the present graduated system. Thus, under the pre-existing law, if the purchase-money on a freehold and a copyhold estate had been 40,000*l.*, the stamp duty upon which, under the old scale, would have been 450*l.*, the purchaser might, by apportioning the purchase-money on the freehold part of the property at 39,980*l.*, and the copyhold at 20*l.*, have effected a saving of 99*l.*; the duty of 39,980*l.* being 350*l.*, and on 20*l.*, 10*s.*

Clause in

The clause in the General Stamp Act (55 Geo. 3, c. 184), only men-

tions conveyances by distinct deeds ; consequently no apportionment of the purchase-money would have prevented the *ad valorem* duty from attaching, when both descriptions of property were contained in the same deed. The clause also speaks only of the assurance of property of different tenures. Still there appears to have been nothing in the act, or independently of it, to preclude purchasers from splitting up and apportioning the property sold, as well as the price to be paid for each part, in such manner as they might think proper, without any regard as to whether the property be all of the same, or of different tenures or titles.

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General Stamp Act only mentions conveyance by distinct deeds.

Under the General Stamp Act also (55 Geo. 3, c. 184), and which is still applicable to the present stamp duties, "where any lands or other property contracted to be purchased by two or more persons jointly, or by any other person for himself and others, or wholly for others, at one entire price for the whole, shall be conveyed in parts or parcels by separate deeds or instruments to the persons for whom the same shall be purchased, for distinct parts or shares of the purchase-money, the principal or only deed of conveyance of each separate part or parcel shall be charged with the said *ad valorem* duty in respect of the sum of money therein specified as the consideration for the same ; but if separate parts or parcels of such lands or other property shall be conveyed to or to the use of, or in trust for, different persons, in and by one and the same deed or instrument, then such deed or instrument shall be charged with the said *ad valorem* duty in respect of the aggregate amount of the purchase or consideration moneys therein mentioned to be paid, or agreed to be paid for the lands or property thereby conveyed to the purchaser."

Where lands are contracted to be purchased by several persons.

In *Hogarth v. Penny* (14 Mees. & Wels. 494), a question arose upon the construction of the above clause. In that case, the lessee of certain salt works agreed to grant an annuity of 1,050*l.* to M. R. K., in consideration of 14,500*l.* The latter, being unable to raise the whole purchase-money, contracted with seven other persons to take portions of the annuity for different portions of the money ; and the lessee, in consideration of 14,500*l.*, granted to trustees eight several annuities, making in all 1,050*l.*, in trust for the grantees respectively, charged on the property. The deed was stamped for the aggregate : it was contended that it should have had a stamp for the consideration of each annuity ; but the court held that it was properly stamped, and that it was expressly within the act. And where several parties sell at distinct prices, but all convey to the purchaser by the same instrument, one stamp will suffice to cover the whole, notwithstanding the conveying parties take distinct interests in the property : as in the case of a sale by several tenants in common, or of several owners of divided portions of the same property, who all concur to the same purchaser. So, where a mortgagee concurs with a mortgagor in the conveyance to a purchaser, or where a tenant for life, remainder-man, reversioner, lessee, heir, trustees, executors, administrators, devisees, legatees, creditors, assignees of bankrupts, or of insolvent debtors, or any other persons are concurring parties, for the purpose of conveying or releasing any estate, right, title, interest, power, claim or demand which they may have, or be supposed to possess, in respect of, or upon the property, one *ad valorem* stamp will be sufficient.

Hogarth v. Penny.

Where several parties sell at distinct prices.

With respect to sub-sales, "where any person having contracted for the purchase of any lands or other property, but not having obtained a conveyance thereof, shall contract to sell to any other person, and the

As to sub-sales.

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same shall in consequence be conveyed immediately to the sub-purchaser, the principal or only deed or instrument of conveyance shall be charged with the said *ad valorem* duty in respect of the purchase or consideration money therein mentioned or agreed to be paid by the sub-purchaser."

As to sub-purchases.

"And where any person having contracted for the purchase of any lands or other property, but not having obtained a conveyance thereof, shall contract to sell the whole or any part or parts thereof to any person or persons, and the same shall in consequence be conveyed by the original seller to different persons, in parts or parcels, the principal or only deed or instrument of conveyance of each part or parcel thereof shall be charged with the said *ad valorem* duty in respect only of the purchase or consideration money which shall be therein mentioned to be paid or agreed to be paid for the same by the person or persons to whom or to whose use or in trust for whom the conveyance shall be made, without regard to the amount of the original purchase-money."

What persons are to be deemed as purchasers and sellers.

"And in all cases of such sub-sales as aforesaid the sub-purchasers and the persons immediately selling to them, shall be deemed and taken to be the purchasers and sellers within the intent and meaning of the provisions and regulations of the act (48 Geo. 3) relating to the *ad valorem* duties on conveyances on the sale of property thereby imposed, and which are to be observed and enforced with regard to the *ad valorem* duties by the said act (55 Geo. 3, c. 181) granted."

Where there is an actual conveyance from the person immediately selling.

But where any sub-purchaser shall take an actual conveyance of the interest of the person immediately selling to him, which shall be chargeable with the said *ad valorem* duty in respect of the purchase or consideration money paid or agreed to be paid by him, and shall be duly stamped accordingly; any deed or instrument of conveyance to be afterwards made to him of the property in question by the original seller, shall be exempted from the said *ad valorem* duty, and be charged only with the ordinary duty on deeds or instruments of the same kind not upon a sale.

Additional duties on conveyances of freehold estates.

In addition, also, to the ordinary *ad valorem* duties on conveyances, in all dispositions of freehold estates transferring the immediate possession, additional stamp duties were rendered necessary; as on the deed of bargain and sale for a year, where the conveyance was by lease and release, and, upon the instrument itself, where the conveyance was made by a feoffment, or a deed of bargain and sale enrolled.

Additional duties in respect of bargain and sale for a year repealed by the new Stamp Act.

These duties were, indeed, continued long after the reasons for having imposed them had ceased; for, when by two subsequent enactments (4 & 5 Vict. c. 21, and 8 & 9 Vict. c. 106), a release being rendered as effectual for the conveyance of freehold estates as a lease and release between the same parties dispensed altogether with the necessity of the preceding lease for a year, the duty payable upon it was still retained; but now, by the 6th section of the new Stamp Act (13 & 14 Vict. c. 97), after reciting that under and by virtue of the said several acts thereinbefore recited, or some of them, certain stamp duties were then payable for or in respect of any bargain and sale, and lease for a year, for vesting the possession of lands or other hereditaments, and enabling the bargainee to obtain a release of the freehold and inheritance; and, also, "that by an act passed in the fourth year of the reign of Her present Majesty, intituled *An Act for rendering a Release as effectual for the conveyance of Freehold Estates as a Lease and Release by the same Parties*, it is provided, that every deed or instrument taking effect under the said last-mentioned act in the manner therein mentioned, shall be chargeable

with the same amount of stamp duty as any bargain and sale or lease for a year would have been chargeable with (except progressive duty) if executed to give effect to such deed or instrument, in addition to the stamp duties which such deed or instrument shall be chargeable with as a release or otherwise under any act or acts relating to stamp duties;" and, also, that "by an act passed in the ninth year of the reign of Her present Majesty, intituled *An Act to amend the Law of Real Property*, it is enacted that every deed which, by force only of the said last-mentioned act, shall be effectual as a grant, shall be chargeable with the stamp duty with which the same deed would have been chargeable in case the same had been a release founded upon a release or bargain and sale for a year, and also with the same stamp duty (exclusive of progressive duty) with which such lease or bargain and sale for a year would have been chargeable;" and that it was expedient to repeal the said duties, enacts, that the said duties then payable for or in respect of such bargain and sale or lease for a year as aforesaid, as also so much of the said two several last-mentioned acts as is thereinbefore recited, should, so far as the same respectively relate to any deed or instrument which shall bear date after the 10th day of October, 1850, be repealed.

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Laws.*
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And by the 7th section of the same act, the additional duty on a conveyance by feoffment, or bargain and sale enrolled, is also repealed.

Additional
duties on feoff-
ments and
bargains and
sales enrolled,
repealed.

No *ad valorem* duties would have attached under the General Stamp Act or any pre-existing statute where the consideration for the purchase was a transfer of stock; but now, under the new Stamp Act (13 & 14 Vict. c. 97, schedule CONVEYANCE), where the consideration shall be any stock in any of the public funds, or any government debenture, or stock of the Bank of England or Bank of Ireland, or any debenture or stock of any corporation, company, society, or person or persons, payable only at the will of the debtor, the said duty shall be calculated (taking the same respectively, whether constituting the whole or a part only of such consideration,) according to the average selling price thereof respectively on the day or on either of the ten days preceding the day of the date of the deed or instrument of conveyance; or, if no sale shall have taken place within such ten days, then, according to the average selling price thereof, on the day of the last preceding sale; and if such consideration or part of such consideration shall be a mortgage judgment, or bond, or a debenture, the amount whereof shall be recoverable by the holder, or any other security whatsoever, whether payable in money or otherwise, then such calculation shall be made according to the sum due thereon for both principal and interest.

No *ad valorem*
duties formerly
chargeable
where the
consideration
was a transfer
of stock.

Alterations
effected by new
Stamp Act.

The new Stamp Act (13 & 14 Vict. c. 97), is altogether silent upon the subject of conveyances by way of exchange. Assurances of this description must therefore still remain within the operation of the General Stamp Act (55 Geo. 3, c. 184), under which they are chargeable with a duty of 1*l.* 15*s.* where no sum of money was paid, or only a sum under 300*l.* shall be paid for equality of exchange; but where a greater sum than 300*l.* or upwards was paid for such equality of exchange, then the same *ad valorem* duty became payable as on the conveyance on a sale of lands for a sum equal to the sum so paid or agreed to be paid, the amount of which will be now regulated by the new scale of duties imposed on conveyances upon sales under the new Stamp Act.

Exchanges.

Deeds of partition are not mentioned in the New Stamp Act (13 & 14 Vict. c. 97), and are, therefore, still chargeable with the duties imposed by the General Stamp Act (55 Geo. 3, c. 184), by which any deed

Partition.

Practical
Observations
upon the Stamp
Laws.

whereby any lands or other hereditaments, or heritable subjects in England or Scotland shall be conveyed, or any copyhold or customary lands and hereditaments in England shall be covenanted to be surrendered in order to effect a *partition or division* thereof amongst coparceners, joint tenants, or tenants in common, heirs, portioners, *coupux fiars*, or joint proprietors of any sort; where no sum of money or a sum under 300*l.* shall be paid for equality of partition, then the ordinary duty of 1*l.* 15*s.* will be chargeable; and where the sum given for such equality of partition shall amount to or exceed 300*l.*, the same *ad valorem* duty will be payable as on a conveyance on the sale of lands, for a sum of money equal to the amount of the sum or sums so agreed to be paid; and so the law still continues, except that the amount of such *ad valorem* duties will now be regulated according to the scale of duties contained in the schedule annexed to the statute 13 & 14 Vict. c. 97.

Progressive
duties.

The progressive duties under the General Stamp Act (55 Geo. 3, c. 184), on conveyances charged with an *ad valorem* duty was 1*l.*; and where no *ad valorem* duty was charged, but the conveyance was chargeable with a duty of 1*l.* 15*s.*, under the head of "Conveyance of any kind whatever not otherwise charged, nor expressly exempted from all stamp duty," the progressive duty was 1*l.* 5*s.* But now, under the statute 13 & 14 Vict. c. 97, schedule PROGRESSIVE DUTY, "where any deed or instrument of any description whatever chargeable with any stamp duty either under this schedule or under any other act or acts now in force, together with any schedule, receipt, or other matter put or indorsed thereon or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, there shall be charged the further progressive duty following, (that is to say);

New progressive
duty.

"Where such deed or instrument shall be chargeable with any *ad valorem* stamp duty, or duties not exceeding in the whole the sum of ten shillings, a further progressive duty equal to the amount of such *ad valorem* duty or duties.

"And in every other case (except where any other progressive duty is by this schedule expressly charged thereon), a further progressive duty of 10*s.*

Act not to
extend to charge
progressive
duties in any
case in which
express provi-
sion is made for
charging a
certain duty, or
to charge with
progressive duty
any instrument
not chargeable
therewith.

For removing
doubts relating
to progressive
duties in respect
of instruments
referred to.

"Provided always, that nothing hereinbefore contained shall extend to charge the said progressive duty in any case in which express provision is made by any such act or acts as aforesaid for charging a certain duty for every skin, sheet, or piece of vellum, parchment, or paper in or upon which any deed or instrument shall be contained or written, or to charge with progressive duty any description of deed or instrument not chargeable with progressive duty under any act or acts now in force, or to charge any deed or instrument with any higher rate or amount of progressive duty than is now chargeable on a deed or instrument of the like description under any such act or acts as aforesaid."

The new Stamp Act also contains a very important enactment for removing doubts relating to progressive duties to be charged on deeds or other instruments, in respect of deeds or other instruments duly stamped and referred to therein. Previously to this enactment, parties by annexing one instrument to another frequently subjected themselves to an amount of stamp duty they never contemplated; for where a separate instrument duly stamped was annexed to and formed part of the latter instrument, and be charged with stamp duty accordingly: (*Veale v. Nicholls*, 1 Mood. &

Rob. 284.) But now, by the 11th section of the new Stamp Act, after reciting that "by the several acts now in force relating to the stamp duties, as well as by this act, certain stamp duties called progressive duties are imposed upon deeds and instruments in respect of certain quantities of words contained therein, together with any schedule, receipt, or other matter put or indorsed thereon or annexed thereto:" and that doubts are entertained whether such progressive duties are chargeable on any deed or instrument in respect of the words contained in any other deed or instrument liable to stamp duty, and duly stamped, which may be put or endorsed upon, or annexed to, or referred to in or by such first-mentioned deed or instrument," and that it is expedient to remove such doubts, proceeds to enact, "that the said progressive duties shall not be deemed or held to be or to have been imposed or chargeable upon any deed or instrument in respect of the words or any quantity of the words contained in any other deed or instrument liable to stamp duty and duly stamped, which may be or may have been put or endorsed upon or annexed to such first-mentioned deed or instrument, or which may be or may have been in any manner incorporated with, or referred to in or by the same."

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Observations
upon the
Stamp Laws.*

Choses in action, such as bonds, judgments, the goodwill of a business, and the like, do not come within the strict definition of other property, real or personal, mentioned in the schedule attached to the Stamp Acts, and therefore these do not fall under the head of "Conveyance," so that a common deed stamp has always been considered sufficient for passing things of this nature: (*Warren v. Howe*, 2 B. & C. 281; *Belcher v. Sikes*, 6 B. & C. 234; *Blandy v. Herbert*, 9 B. & C. 400; *Colwell v. Dawson*, 14 L. T. 468.)

Chose in action:
no *ad valorem*
duties charge-
able upon
conveyance of.

A power of attorney to execute a deed must be made by deed (*White v. Cayler*, 8 T. R. 176; *Horsley v. Rush*, cited in *Harrison v. Jackson*, 7 T. R. 209; *Williams v. Walsby*, 4 Esp. N. P. P. 220; *Steiglitz v. Egginton*, Holt N. P. C. 141; *Barkley v. Harding*, 8 Dow. & R. 102), and as such will require a deed stamp; for, notwithstanding, a letter or power of attorney is charged with a specific duty, according to the purposes for which it is to be applied; as, to receive prize-money, which is covered with a duty of 1s., or wages, or for the sale or transfer or acceptance of stock, which requires a duty of 1l., or letters of attorney of every other kind, or commission or factory in the nature thereof, the duty for which is 1l. 10s.; still, if a power of attorney is executed as a deed sealed and delivered by the parties, it then becomes a deed, and all the incidents of deed will attach upon it, and it must be stamped accordingly (*Rex v. Fauntleroy*, 1 Car. & Pay. 421) with a 1l. 15s. stamp, although, if not so executed, a different kind of stamp would have been adapted to it under some other particular head of the Stamp Act, as already mentioned; but a power of attorney operating as a deed will only require one stamp, viz., the 1l. 15s. stamp, as a deed not otherwise charged; and the stamp, under the head "Letter of Attorney" in the General Stamp Act (55 Geo. 3, c. 184), may, in such case, be dispensed with: (see *Tilsley on Stamps*, 386, *et seq.*, 2nd edition.) A revocation of a power of attorney, for whatever purpose given, may be revoked by parol, and if so made, no stamp duty whatever will be payable; but if such revocation be by deed, then a deed stamp will be requisite: (*Rex v. Wait*, 1 Bing. 131.)

Power of
attorney.

A simple act of attornment to the persons legally entitled to the reversion, requires no stamp, whether as an agreement, or as an instrument not otherwise charged; an act of this kind never having been

Attornment.

*Practical
Observations
upon the Stamp
Laws.*

deemed of sufficient importance to occupy a place in the schedules: (*Cornish v. Learall*, 8 B. & B. 471; and *Cov. on Stamps*, 199; *Doe dem. Liney v. Edwards*, 5 Ad. & Ell. 95; *Doe dem. Wright v. Smith*, 8 Ad. & Ell. 255; 3 Nev. & Per. 355.) But if an attornment be made to persons having no right to the property, such an instrument will not be admissible in evidence, unless stamped as an agreement; and it has been recently held, that, although a mere memorandum of attornment required no stamp, yet if it proceeded to state the amount of rent, and the mode of payment, it became an agreement chargeable with duty: (*Trankis v. Trankis*, 3 Per. & Dav. 565.)

Ad valorem
duty on conveyance does not attach, unless the instrument operates as such.

In order, also, that an *ad valorem* duty may attach upon a conveyance, it is necessary that the instrument should operate as such. Hence, it has been determined that an award, although under hand and seal, and conferring an interest in real estate, will only require the common deed stamp (1*l.* 15*s.*); and however numerous the proprietors may be, it will operate as a separate award of the rights of each individual; and in a modern case, where the Inclosure Act gave the commissioners power to award lands to those who bought them of persons entitled to allotments, it was held that they might award lands in exchange, partly for lands, and partly for money, and the award did not require an *ad valorem* stamp on the money consideration, which greatly exceeded 300*l.*: (*Doe dem. Suffield v. Preston*, 7 B. & C. 392.)

No *ad valorem*
duties payable
on awards by
commissioners
under Inclosure
Acts.

Agreement to
present to a
rectory not
liable to *ad*
valorem duty.

Upon the same principle, also, an agreement in consideration of 7,000*l.* to present to a rectory, was held not to be a conveyance chargeable with *ad valorem* duty, notwithstanding it was contended that the Lord Chancellor would, in the event of a vacancy, have decreed the purchaser the next presentation: (*Wilnot v. Wilkinson*, 6 B. & C. 506.)

As to veins of
coal.

And in another case, where the plaintiff agreed to sell to the defendants all the two upper beds or veins of coal under certain lands containing sixteen acres, more or less, at 77*l.* per acre, to be paid as follows, viz.: 100*l.* on the day of the date, and the remainder by equal quarterly payments of 25*l.* each; and it was also stipulated, that if the defendants should work more of the coal in any year than 100*l.*, the defendants should pay for such excess quarterly, after the rate aforesaid: the court held, notwithstanding no further conveyance appeared to have been contemplated, and that the transaction amounted to a sale, still, that the instrument did not fall within the description of those charged with *ad valorem* duty: (*Phillips v. Morrison*, 23 L. J. Rep., N. S., 212, Ex.) Neither will an agreement for a sale of the vesture of land require an *ad valorem* stamp.

As to the sale
of the vesture
of land.

No *ad valorem*
duty will attach
unless upon an
actual sale.

The transaction also, in order that an *ad valorem* duty may attach upon it, must be an actual sale, for a conveyance by way of family arrangement will not be so considered; but in cases of the latter kind the proper stamps will be those included under the head "Settlement," hereinafter mentioned: (*Denn and Manifold v. Diamond*, 4 B. & C. 423; S. C., 6 Dow. & R. 328; *Massey v. Manney*, 3 Bing. N. C. 478; *Re Kerry Glazier*, Ir. Cir. Rep. 140.)

As to instru-
ments having
wrong stamps.

With respect to instruments having wrong stamps affixed to them, the statute 43 Geo. 3, c. 127, enacts, that any paper, vellum, or parchment upon which any instrument, matter or thing (except bills or notes) is engrossed, printed or written, liable to be stamped with a stamp or stamps of a particular denomination, but of equal or greater value, may be stamped without payment of any penalty; and the same is also re-enacted by the General Stamp Act (55 Geo. 3, c. 184) except in cases where the

stamp is specifically appropriate to any other instrument. These enactments are, however, superfluous, as far as deeds under seal are concerned, as these instruments have never been marked with any specific character; and, although scheduled out as conveyances, leases, mortgages, &c., yet no stamp has ever been struck bearing any of those titles; consequently, the same description of stamp, if of proper value, is adapted to every kind of deed.

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Observations
upon the Stamp
Laws.*

With respect to deeds the difficulty has been to determine what is the actual amount of duty which the acts require, or where there are several instruments relating to the same transaction, to ascertain in respect of which of these the *ad valorem* duty is to be paid.

*Difficulties as to
amount of
duties, and as to
instruments to
which the *ad
valorem* stamp
is to be affixed.*

To remove any doubts which may thus arise, the General Stamp Act (55 Geo. 3, c. 184) enacts, that where in any case not thereinbefore specially provided for, of several deeds or instruments in writing, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to pay the *ad valorem* duty thereon accordingly; and, if necessary, the other deeds, instruments or writings on which the doubt shall have arisen, shall be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty upon all deeds, or instruments being produced, and appearing to be duly stamped in other respects. And now, under the provisions of the new Stamp Act (13 & 14 Vict. c. 97, sect. 14), after reciting that doubts frequently arise as to the stamp duties with which some deeds or instruments are chargeable, and that it is expedient that some provision should be made whereby such doubts may be removed, proceeds to enact, "that when any deed or instrument liable to stamp duty, whether previously stamped or otherwise, shall be presented to the Commissioners of Inland Revenue at their office, and the party presenting the same shall desire to have the opinion of the said commissioners as to the stamp duty with which such deed or instrument in their judgment is chargeable, and shall tender and pay to the said commissioners a fee of ten shillings (which shall be accounted for and paid over as part of Her Majesty's revenue arising from stamp duties), it shall be lawful for the said commissioners, and they are hereby required to assess and charge the stamp duty to which in their judgment such deed or instrument is liable, and upon payment of the stamp duty so assessed and charged by them, or, in the case of a deed or instrument insufficiently stamped of such a sum as, together with the stamp duty already paid thereon, shall be equal to the duty so assessed and charged, and upon payment also of the amount, if any, payable by way of penalty on stamping such deed or instrument, to stamp such deed or instrument with the proper stamp or stamps denoting the amount of the duty so paid, and thereupon, or if the full stamp duty to which in the judgment of the said commissioners such deed or instrument shall be liable shall have been previously paid and denoted upon the same in manner aforesaid, the said commissioners shall impress upon such deed or instrument a particular stamp to be provided by them for that purpose, with such word or words or device or symbol thereon as they shall think proper in that behalf, and such last-mentioned stamp shall be deemed and taken to signify and denote that the full amount of stamp duty with which such deed or instrument is by law chargeable has been paid, and every deed or instrument upon which the same shall be impressed shall be deemed to have been duly stamped, and shall be receivable in evidence in all courts of law or equity, notwith-

*Where there are
several instru-
ments.*

*Practical
Observations
upon the Stamp
Laws.*

Stat. 16 & 17
Vict. c. 2.

Commissioners
of Inland
Revenue may
adjudge deeds
not liable to
stamp duty.

Appeal from
determination
of the com-
missioners.

standing any objection made to the same as being insufficiently stamped; save and except that such last-mentioned stamp shall not be impressed upon any deed or instrument chargeable with *ad valorem* duty under or by reference to the head of Bond or Mortgage in the schedule to this act, where the same is made as a security for the payment or transfer or retransfer of money or stock without any limit as to the amount thereof; and provided always, that nothing herein contained shall be deemed or construed to extend to require or authorize the said commissioners to stamp as last aforesaid any probate of a will or letters of administration, or to stamp as last aforesaid any deed or instrument after the signing or execution thereof in any case in which the stamping thereof is expressly prohibited by any law in force." This act, although it authorized the commissioners to adjudge what stamp duties instruments were liable to, and to impress them with a particular stamp denoting the amount, does not authorize them to impress such a stamp on any instrument that is not chargeable with any stamp duty in order to show that the same is not chargeable. To remedy which the stat. 16 & 17 Vict. c. 59, after reciting that by the said act 13 & 14 Vict. c. 97, "when any deed or instrument shall be presented to the Commissioners of Inland Revenue and the fee of 10s. shall be paid to them for their opinion as to the stamp duty with which such deed or instrument in their judgment is chargeable, the said commissioners are required to assess and charge the stamp duty on such deed or instrument, and on the same being duly stamped to impress thereon a particular stamp to signify and denote that the full amount of stamp duty with which such deed or instrument is by law chargeable has been paid; and also reciting that the said commissioners are not authorized to impress a particular stamp upon any deed or instrument not chargeable with any stamp duty in order to denote that the same is not so chargeable, and that it is expedient that provision should be made for that purpose, proceeds to enact, that "it shall be lawful for any person to present to the said commissioners any deed or instrument, and upon payment of the sum of 10s., as in the said act mentioned to inquire their opinion whether or not the same is chargeable with any stamp duty, and if the said commissioners shall be of opinion that such deed or instrument is not chargeable with any stamp duty, it shall be lawful for them, and they are hereby required to impress thereon a particular stamp to be provided by them for that purpose, with such word or words, or device or symbol as they shall think proper in that behalf, which shall signify and denote that such deed is not chargeable with any stamp duty; and every such deed or instrument upon which the said stamp shall be impressed shall be deemed to be not so chargeable, and shall be receivable in evidence in all courts of law and equity, notwithstanding any objection made to the same as chargeable with stamp duty, and not stamped to denote the same: provided always, that if the said commissioners shall assess and charge any stamp duty upon or in respect of any such deed or instrument, and the party presenting the same and paying such duty shall declare himself dissatisfied with their determination, it shall be lawful for him to appeal against the same to Her Majesty's Court of Exchequer, on the terms, and in the manner in the said act provided; and the court shall hear and determine the appeal, and decide whether the said deed or instrument is chargeable with any, and if any, what stamp duty; and if the court shall be of opinion that the same is not so chargeable or is chargeable with a less amount of duty than shall have been assessed and charged

thereon, then the amount of such duty, or of the excess (as the case may be) shall be returned to the appellant, together with the sum deposited as in the act mentioned; and if the court shall be of opinion that any further duty is chargeable on the said deed or instrument, such further duty shall be paid to the said commissioners, and the court shall order and enforce the payment thereof accordingly. (Sect. 13.)

*Practical
Observations
upon the Stamp
Laws.*

These enactments by the new Stamp Act (13 & 14 Vict. c. 97, s. 14 and 16 & 17 Vict. c. 54, s. 13 are great improvements of the pre-existing law under the General Stamp Act, for, under the latter, solicitors and other persons employed in preparing deeds were often at a loss to find out what stamp they ought to employ, or indeed to ascertain, when any special clauses were inserted in a deed, whether such clauses could be treated as connected solely with purchase and conveyance of the property, or as introducing fresh matter requiring additional stamp duty; and thus on the one hand, from a superabundance of caution, an extra and unnecessary expense was incurred by using more stamps than there was any necessity for; or, on the other hand, the deed was rendered inadmissible in evidence, and penalties were incurred, on account of an insufficient number of stamps being attached to the deed. These evils are in great measure removed by the above-mentioned clause in the new Stamp Act, and the small extra costs of 10s. are amply compensated for by the removal of all doubt and anxiety as to the sufficiency of the stamps which ought to be employed in any transaction.

The impression of the denoting stamp, although conclusive in courts of law and equity, that the instruments are properly stamped, is not absolute and conclusive on the parties presenting the same to the commissioners for their opinion, for such parties, if they are dissatisfied with the determination of the commissioners, may, upon payment of the amount of the stamp duty according to such determination, and depositing with the said commissioners the sum of forty shillings for costs, in the event hereinafter provided for, require the commissioners to state specially, and to sign the case on which the question with respect to such stamp duty, arose, together with their determination thereupon, and to deliver the same to the party making such request, in order that he may appeal against such determination to Her Majesty's Court of Exchequer, who are thereby required to hear and determine the said appeal, and to decide as to the stamp duty with which such instrument is chargeable, and according to such decision, the stamp duty and penalty (if any) which shall have been the subject of such case, shall be deemed to have been payable by law; and if it shall appear that no excess of duty or penalty shall have been paid by the appellant, then the forty shillings deposited for costs shall be applied to the use of Her Majesty's revenue; but if any such excess as aforesaid shall appear to have been paid by the appellant, the same, together with forty shillings deposit, shall be repaid him; and if the sum paid for stamp duty or penalty shall fall short of the amount which, according to the decision of the court upon such appeal ought to have been paid, such deficiency shall be paid by the appellant, and the court shall order and enforce the payment thereof accordingly.

Parties dissatisfied with the determination of the commissioners as to the stamp duties chargeable, may appeal to the Court of Exchequer, and the duty shall be paid according to the decision of the court.

SECTION II.

ASSIGNMENT OF LEASEHOLD ESTATES, AND
OF OTHER CHATTELS AND PERSONAL
ESTATE.

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- No. I.—ASSIGNMENT OF LEASEHOLD PREMISES HELD FOR A TERM OF NINETY-NINE YEARS, DETERMINABLE ON THREE LIVES.
- No. II.—ASSIGNMENT OF A LEASEHOLD MESSAGE FOR THE RESIDUE OF A TERM OF NINETY-NINE YEARS, DETERMINABLE ON THREE LIVES, WITH THE LICENSE OF THE LESSOR, THE PURCHASER COVENANTING NOT TO ASSIGN OR UNDERLET WITHOUT HIS LICENSE, AND TO PERFORM THE COVENANTS OF THE LEASE.
- No. III.—ASSIGNMENT OF A LEASEHOLD MESSAGE, PART OF CERTAIN LEASEHOLD PREMISES, THE REMAINDER BEING RETAINED BY THE VENDOR, WITH MUTUAL COVENANTS BY VENDOR AND PURCHASER TO PAY THEIR RESPECTIVE PROPORTIONS OF THE RENTS, WITH CROSS POWERS OF DISTRESS; THE VENDOR ALSO COVENANTING TO PRODUCE THE ORIGINAL LEASE OF THE PREMISES.
- No. IV.—ASSIGNMENT BY LESSEE OF A LEASEHOLD MESSAGE, FORMING A PORTION OF THE DEMISED PREMISES TO A PURCHASER FOR THE RESIDUE OF A TERM; THE LESSOR CONCURRING FOR THE PURPOSE OF APPORTIONING THE RENT.
- No. V.—ASSIGNMENT BY MORTGAGEE AND MORTGAGOR OF LEASEHOLD PREMISES, HELD FOR THE RESIDUE OF A TERM OF NINETY-NINE YEARS, DETERMINABLE ON THREE LIVES TO A PURCHASER, WITH USUAL COVENANTS. VARIATION WHERE A POLICY OF ASSURANCE UPON ONE OF THE LIVES, WHEREON THE LEASE IS DETERMINABLE, IS ALSO ASSIGNED TO THE PURCHASER.
- No. VI. ASSIGNMENT OF LEASEHOLD PREMISES FOR THE RESIDUE OF THE TERM BY THE ASSIGNEES OF AN INSOLVENT DEBTOR; A MORTGAGEE OF THE PREMISES AND THE INSOLVENT CONCURRING.
- No. VII.—ASSIGNMENT OF A LEASEHOLD MESSAGE AND PREMISES FOR THE RESIDUE OF A TERM BY TWO OF THREE EXECUTORS AND RESIDUARY LEGATEES, TO A TRUSTEE FOR THE BENEFIT OF A THIRD EXECUTOR AND RESIDUARY LEGATEE, AS HIS PORTION OF THE RESIDUARY ESTATE.
- No. VIII.—RELEASE AND ASSIGNMENT OF ONE MOIETY OF THE GENERAL RESIDUARY ESTATE BY ONE TENANT IN COMMON TO HIS COMPANION IN TENANCY.

- NO. IX.—ASSIGNMENT OF GROUND RENTS BY THE REVERSIONER TO A PURCHASER, WITH USUAL COVENANTS FOR TITLE, THE PREMISES BEING DEMISED TO THE PURCHASER TO ENABLE HIM TO RECOVER THEM.
- NO. X.—ASSIGNMENT OF A BOND FOR SECURING A DEBT OF £1,000 TO A PURCHASER, WITH POWER OF ATTORNEY TO SUE, AND USUAL QUALIFIED COVENANTS FROM VENDOR.
- NO. XI.—ASSIGNMENT OF A SIMPLE CONTRACT DEBT, WITH POWER OF ATTORNEY TO SUE, AND USUAL COVENANTS.
- NO. XII.—ASSIGNMENT BY WAY OF ABSOLUTE SALE FROM A MORTGAGEE TO A PURCHASER OF A MORTGAGE DEBT OF £1,000, AND OF THE SUM OF £75, BEING AN ARREAR OF INTEREST; AND ALSO OF THE MORTGAGED PREMISES WHICH HAD BEEN DEMISED TO THE MORTGAGEE FOR A TERM OF 2,000 YEARS.
- NO. XIII.—ASSIGNMENT BY A PATENTEE AND HIS PARTNER, OF THEIR INTEREST IN A PATENT.

No. I.

ASSIGNMENT OF LEASEHOLD PREMISES HELD FOR A TERM
OF NINETY-NINE YEARS, DETERMINABLE ON THREE LIVES,
WITH USUAL COVENANTS.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of original lease. 3. Of agreement to purchase. 4. Testatum by which vendor assigns. 5. Habendum to purchaser for residue of term. 6. Covenant from vendor that the lease is valid. 7. That vendor has good right to assign. | <ol style="list-style-type: none"> 8. That vendor has paid all rents and performed covenants. 9. For quiet enjoyment by purchaser. 10. For further assurance. 11. Covenant from purchaser to indemnify vendor from the covenants of the lease. <p style="text-align: center;"><i>Additional Clause.</i></p> <p>A. Recital that lease contains a covenant for renewal.</p> |
|---|---|

Parties.

1. THIS INDENTURE, (a) made the day of A.D. 185 .
BETWEEN (*vendor*) of, &c., of the one part, and (*purchaser*), of,
&c., of the other part.

Practical
remarks.

(a) Previously to the Statute of Frauds (29 Car. 2, c. 3) a term of years in land might have been assigned by parol; but by the 3rd section of that statute, all assignments were required to be in writing; still, as that statute did not prescribe any particular kind of instrument, it might have been effected as well by a mere note in writing as by deed, if it was signed by the party, or his lawfully authorized agents. The Stamp Acts next stepped in (44 Geo. 3, c. 78; 55 Geo. 3, c. 184) and required all assignments, whether by deed or note in writing, to be stamped with the common deed stamp, yet these enactments did not alter the nature of the instrument itself, so that an assignment might still have been made by simple note in writing as before (*Rex v. Little Dean*, Str. 555; *Farmer ex dem. Earl v. Rogers*, 2 Wils. 26; *Beak ex dem. Fry v. Phillips*, 5 Bur. 2827.) And thus the law stood until the passing of the act 8 & 9 Vict. c. 106, by which it is declared that all assignments, *not being an instrument which might have been created without writing*, made after the 1st of October, 1845, shall be void at law, unless made by deed. But notwithstanding this last enactment, a mere note in writing, if duly signed by the parties, will nevertheless be supported in equity as an agreement, and as such will pass an equitable interest to the assignee.

2. WHEREAS by indenture bearing date on or about the day of _____, and made between (name and addition of lessor) of the one part, and the said (vendor) of the other part, It is witnessed that for the considerations therein mentioned, the said (lessor) did grant and demise unto the said (vendor), ALL, &c., [HERE DESCRIBE parcels.] To HOLD the same, with the appurtenances, unto the said (vendor), his executors, administrators, and assigns, for the term of ninety-nine years thence next ensuing, if the said (vendor), Mary his wife, and R. F., a son of the said (vendor) and Mary his wife, or any or either of them, should so long live; Subject to the yearly rent of 4*l.* payable quarterly as therein mentioned, and to certain covenants, clauses, stipulations and agreements in the now reciting indenture of lease reserved and contained. (b)

No. 1.

Assignment of
Leasehold
Premises held
for a term
of ninety-nine
years,
determinable
on three lives,
with usual
Covenants.

Recital of
original lease.

And as the statute does not require an assignment to be by deed of such interest as might by law have been created without writing, it seems that a parol lease, not exceeding three years, and valid as such within the second section of the Statute of Frauds,* may even now be assigned by a single note in writing, if stamped with a proper stamp: (1 Hughes's Pract. Sales, 542, 2nd edit.) Stat. 29 CH. 2.

It also must be borne in mind that the deed stamp is only applicable to assignments where there is no consideration, or only a nominal one is expressed to have been paid, for whenever there is an actual consideration, the assurance then comes under the head of Conveyance by Assignment within the express words contained in the Stamp Acts, 55 Geo. 3, c. 184, and 13 & 14 Vict. c. 97; and such an assignment must be stamped accordingly: (Hughes's New Stamp Act, p. 78.) As to proper stamps on assignments.

(b) If the lease contains a covenant for renewal, insert the following recital:—

A. "AND WHEREAS the now reciting indenture also contains a covenant on the part of the said (lessor) to execute a new lease of the said premises on the dropping of any one of the said lives, (†) at the same rents, and with the like provisoes, conditions and cove- Recital that lease contains a covenant for renewal.

* The second section of the Statute of Frauds excepts all leases, not exceeding three years from the making thereof, whereupon the rent reserved to the landlord shall amount to two-thirds of the improved value.

(†) Generally speaking, covenants for renewal are not much favoured (*Barnham v. Guy's Hospital*, 3 Ves. 295; *Moore v. Foley*, 6 ib. 232), though such a right might be clearly conferred where the lease is granted by the persons entitled to the fee simple and inheritance of the demised property: (*Bridges v. Hitchcock*, 5 Bro. P. C. 6.) Yet as a covenant of this kind is construed strictly in favour of a lessor, a covenant to renew under the same covenants as contained in the original lease, has been held not to include a covenant for perpetual renewal. Hence, where A. by indenture, in consideration of a certain sum in the nature of a fine, and of a yearly rent, demised land for twenty-one years, and covenanted at the end of eighteen years of the term, or before, on request of the lessee, to grant a new lease of the premises, "for the like fine, for the like term of twenty-one years, at the like yearly rent, with all covenants as in that indenture were contained;" it was holden that this covenant was satisfied by a

Covenants for renewal are generally construed strictly.

No. 1.

Assignment of
Leasehold
Premises held
for a term
of ninety-nine
years,
determinable
on three lives,
with usual
Covenants.

Of agreement to
purchase.

Testatum by
which vendor
assigns.

3. AND WHEREAS the said (*purchaser*) has contracted with the said (*vendor*) for the purchase of the said leasehold tenements and premises for the residue of the said term of ninety-nine years, subject (c) as aforesaid, for the price of 800*l*.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract and in consideration of the sum of 800*l*. sterling, paid by the said (*purchaser*), to the said (*vendor*) on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*) DOTH by these presents assign (*d*)

Practical
observations.

(c) If the lease is renewable, add "and renewable as aforesaid."

(d) The operative words that have been most commonly used in assignments of leasehold property are, "grant, bargain, sell, assign, transfer, and set over." The terms "bargain and sell," are, however, inapplicable to a deed of assignment, although proper in an original demise, where it is intended to transmit the possession under the Statute of Uses; but that statute has no application to the assignment of terms of years after they are created, and it is therefore most correct to omit those expressions altogether. The most apt operative word is, "assign," and the others, as they convey no more extensive meaning, may just as well be left out as inserted: (1 Hughes's Pract. Sales, 212, 2nd edit.)

nants [including also a like covenant for renewal], ‡ as is contained in the said hereinbefore recited indenture of lease, unto the said (*vendor*), his executors, administrators and assigns, for a term of ninety-nine years, determinable on three lives, he or they paying for every new life so added by way of fine, the sum of 150*l*. and all arrears of rent."

tender of the new lease for twenty-one years, containing all the former covenants except the covenant for future renewal: (*Iggulden v. May*, 7 East, 237; *Hyde v. Skinner*, 2 P. Wms. 196; *Redshaw v. Bedford Level Company*, 1 Eden. 349; *Lee v. Vernon (Lord)*, 5 Bro. P. C. 10; *Tritton v. Foote*, 2 Bro. C. C. 636. And the same construction is put upon such a covenant in equity: (*Baynham v. Guy's Hospital*, 3 Ves. 295; *Eaton v. Lyon*, *ib.* 691; *Moore v. Foley*, 6 *ib.* 232; *City of London v. Mitford*, 14 *ib.* 50; *Watson v. Hemsworth Hospital*, *ib.* 324; *Willan v. Willan*, 16 *ib.* 72; *Dowling v. Mill*, 1 Mad. 548; *Higgins v. Rose*, 3 Bligh, 113.) But notwithstanding the courts lean against construing a covenant to be for a perpetual renewal, still, if it clearly appears to be so, it must be specifically executed; and a purchaser from a tenant in tail, with notice from him of an agreement to renew a lease under which his father as tenant for life had agreed to renew, is bound to renew accordingly: (*Brooke v. Bulkeley*, 2 Ves. 498.)

(‡) If the renewed lease is not intended to contain a covenant for renewal, the words within brackets must be struck out.

unto the said (*purchaser*), his executors, administrators and assigns, ALL, &c., [HERE DESCRIBE *parcels*.] AND all rights, members and appurtenances to the said premises belonging; AND all the estate, right, title and interest, both legal and equitable, of him the said (*vendor*) therein; (e) TOGETHER with the said hereinbefore recited indenture of lease, and all other documents relating to the title of the said premises in the possession of the said (*vendor*), or which he can procure without suit.

No. 1.
Assignment of
Leasehold
Premises held
for a term
of ninety-nine
years,
determinable
on three lives,
with usual
Covenants.

5. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereby assigned, with their appurtenances, unto the said (*purchaser*), his executors, administrators and assigns, henceforth for all the unexpired residue of the said term of ninety-nine years, determinable (f) as aforesaid, and for all other the estate, term and interest of him the said (*vendor*) therein: Subject to the rents, heriots, covenants, conditions and agreements reserved and contained in the said hereinbefore recited indenture of lease, and which on the tenant or lessee's part ought to be paid, observed and performed.

Habendum to
purchaser for
residue of term.

6. AND the said (*vendor*) doth hereby for himself, his executors and administrators, covenant with the said (*purchaser*), his executors, administrators and assigns, that (notwithstanding any act done or permitted by him the said (*vendor*) to the contrary) the said hereinbefore recited indenture of lease of the day of is a good and subsisting lease of the premises thereby demised, and is still in force for all the unexpired residue of the said term of ninety-nine years thereby granted, determinable (f) as aforesaid.

Covenant from
vendor that the
lease is valid.

(e) The all-estate clause is properly adapted to an assignment, as that assurance is intended to embrace all the assignor's interest in the term although it would have been equally improper in an underlease which passes a lesser estate. It was formerly considered if an assignor reserved rent, or a right of entry, notwithstanding the deed assigned his whole term in the premises, that it operated as a lease, and not as an assignment: (*Pulteney v. Holmes*, Str. 405.) But it is now settled, that although the instrument is stated to be a lease, yet if in point of fact it comprehends all the estate which resides in the grantor, it must be construed to be an assignment and not an underlease; and a right of entry, or a reservation of rent, will be insufficient to rebut this construction, or to change the nature of the estate: (*Palmer v. Edwards*, Doug. 187, n.)

Practical
observations.

(f) If the lease does contain a clause for renewal the words "and renewable" must be inserted here.

No. I.

*Assignment of
Leasehold
Premises held
for a term
of ninety-nine
years,
determinable
on three lives,
with usual
Covenants.*

That vendor
has good right
to assign.

That vendor
has paid all
rents and
performed
covenants.

For quiet
enjoyment by
purchaser.

7. AND ALSO that (notwithstanding any such act as aforesaid) the said (*vendor*) now hath in himself good right to assign the said leasehold premises in manner aforesaid, according to the true intent and meaning of these presents.

8. AND ALSO that the yearly rents, covenants and agreements reserved and contained in the said hereinbefore recited indenture of lease, on the part of the lessee to be paid, observed and performed, have been paid, observed and performed accordingly up to the day of the date hereof.

9. AND FURTHER, that, subject to the payment of the rent, and performance of the covenants, conditions and agreements reserved and contained in and by the said hereinbefore recited indenture of lease, it shall be lawful for the said (*purchaser*), his executors, administrators and assigns, peaceably and quietly to enter into and upon, hold and enjoy the said tenement and premises for all the (unexpired) residue of the said term of ninety-nine years, determinable (*g*) as aforesaid, without let, eviction, molestation or disturbance of or by the said (*vendor*), or any other person or persons whomsoever rightfully claiming under him; AND that free from all estates, rights, titles, liens, charges and incumbrances whatsoever, made or occasioned by the said (*vendor*), or any other person or persons whomsoever rightfully claiming under him.

For further
assurance.

10. AND MOREOVER that the said (*vendor*), and all persons rightfully claiming any estate or interest in the said hereby assigned premises under him, shall and will, from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his executors, administrators or assigns, enter into, execute and perfect all such further acts, assignments or other assurances in the law whatsoever, for the more perfectly or satisfactorily assigning, assuring and confirming the said tenements and premises unto the said (*purchaser*), his executors, administrators and assigns, for all the then residue of the said term of ninety-nine years determinable (*g*) as aforesaid, as the said (*purchaser*), his exe-

(*g*) If the lease does contain a clause for renewal the words "and renewable" must be inserted here.

utors, administrators or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed.

11. AND (h) the said (*purchaser*), doth hereby for himself, his heirs, executors and administrators, covenant with the said (*vendor*) his executors, administrators and assigns, that he the said (*purchaser*), his executors, administrators or assigns, will from time to time during the said term, pay the said reserved rent of 4*l.* when and as the same shall become due and payable, and also duly observe and perform the covenants, conditions and agreements in the said hereinbefore recited indenture of lease contained, and which on the tenant or lessee's part ought to be paid, observed and performed. And also, shall and will, from time to time and at all times hereafter, keep harmless and indemnified the (*vendor*), his executors or administrators, from all actions, suits and other proceedings which may be prosecuted against the said (*vendor*), his executors or administrators, and all damages and costs incidental thereto, by reason of the nonpayment of the said rent, or non-observance or non-performance of the said covenants, conditions or agreements, or any of them, or in relation thereto.

No. 1.

*Assignment of
Leasehold
Premises held
for a term
of ninety-nine
years,
determinable
on three lives,
with usual
Covenants.*

Covenant from
purchaser to
indemnify
vendor from
covenants of
lease.

IN WITNESS, &c.

(h) This covenant should never be omitted where the original lessee is the vendor; because, with respect to all express covenants entered into by him, he will remain liable during the continuance of his term, notwithstanding he may have assigned it to a third person (*Orgill v. Kemshead*, 4 Taunt. 642); nor will the circumstance of the lessor's having accepted the assignee as his tenant vary the case: (*Barnard v. Godscall*, Cro. Jac. 309; *Brett v. Cumberland*, ib. 522; *Ventrice v. Goodcheap*, 1 Roll. Abr. 522, pl. 1; *Fisher v. Ameers*, 1 Brownl. 20; *Thursby v. Plant*, 1 Sid. 402, 427; *Boulton v. Cann*, Freem. 337; *Ashurst v. Mingay*, T. Jones, 144; *Edwards v. Morgan*, 3 Lev. 233; *Joddrell v. Corwell* Ca. temp. Hard. 343; *Auriol v. Mills*, 4 T. R. 94.) But an assignee is only liable for breach of covenant during the time he is in possession of the premises: (*Pitcher v. Tovey*, Salk. 81; S. C., by name of *Tovey v. Pitcher*, 3 Lev. 295; *Chancellor v. Poole*, Doug. 764; *Churchwardens of St. Saviour's v. Smith*, 2 Bur. 1271; S. C., 1 W. Blackst. 351; *Lereux v. Nash*, Str. 1221; *Taylor v. Shum*, 1 Bos. & Pull. 21; *Odell v. Wake*, 3 Camp. N. P. C. 394.)

Practical
suggestions.

No. II.

ASSIGNMENT OF A LEASEHOLD MESSAGE FOR THE RESIDUE OF A TERM OF NINETY-NINE YEARS, DETERMINABLE ON THREE LIVES, WITH THE LICENCE OF THE LESSOR, THE PURCHASER COVENANTING WITH THE LESSOR NOT TO ASSIGN OR UNDERLET WITHOUT LICENCE,^(a) AND TO PERFORM THE COVENANTS OF THE LEASE.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital that the lease contains a covenant not to assign without licence. 3. Of agreement to sell. 4. That lessor will licence the assignment. 5. Testatum: vendor, with lessor's licence, assignus. 6. Habendum to lessee for residue of term. 7. Covenant from vendor that with lessor's licence he has good right to assign. | <ol style="list-style-type: none"> 8. Covenant from purchaser not to assign without licence from lessor. 9. To perform the covenants of the lease. 10. Proviso of re-entry for breach of covenant. 11. Covenant from lessor for quiet enjoyment by lessee, subject to rents and covenants. <p style="text-align: center;">Additional Clauses.</p> <ol style="list-style-type: none"> A. Recital that lessee is not to carry on certain trades on demised premises. B. Covenant not to carry on certain trades. |
|--|--|

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,

Licence once
given discharges
the condition.

(a) Where a licence to assign is once given the condition is entirely discharged; and this, whether the licence be given as to the whole, or only a portion of the demised premises: (*Dumpor's case*, Cro. Eliz. 815; S. C., 4 Rep. 119; *Leeds v. Compton*, cited 4 Rep. 120; *Brummell v. Macpherson*, 14 Ves. 173.) It becomes necessary, therefore, for a lessor who is desirous of retaining this restriction as to future assignments or under-leases, to require a fresh covenant to that effect from the assignee or sub-lessee; and also, if it is intended to avoid the term on breach of such covenant, to insert a fresh proviso for that purpose. It will be proper also to make such assignee or sub-lessee covenant to perform the covenants of the lease. It has, indeed, been said that the mere licence to assign dispenses with all the other covenants of the original lease; but this is not warranted by the authorities, which, it seems, go no further than as to vacating the proviso against assignments; still it will be the more prudent course, as far as the lessor's interests are concerned, to insert the covenants and proviso, as above suggested, and thus effectually prevent any question from being raised upon the subject.

BETWEEN (*vendor*) of, &c., of the first part (*lessor*), of, &c., of the second part, and (*purchaser*) of, &c., of the third part. [RECITE ORIGINAL LEASE for ninety-nine years determinable on lives, *ut ante*, No. I., clause 2, p. 243.]

No. II.

Assignment of a Leasehold Message for the residue of term, with the Licence of the Lessor, &c.

2. AND the now reciting lease also contains a covenant from the said (*vendor*) not to assign or underlet the said message or dwelling-house and premises without the licence of the said (*lessor*) first had and obtained. (*b*)

Recital that the original lease contains a covenant not to assign without licence.

3. AND WHEREAS the said (*vendor*) has contracted to sell the said message or dwelling-house and premises unto the said (*purchaser*) for the sum of 1,200*l*.

Of agreement to sell.

4. AND WHEREAS the said (*vendor*) had applied to the said (*lessor*) for his licence to assign the said message or dwelling-house and premises unto the said (*purchaser*), which the said (*lessor*) has agreed to grant, upon the said (*purchaser*) entering into such covenant with the said (*lessor*) as hereinafter is contained.

That lessor will licence the assignment.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of 1,200*l*. sterling, paid by the said (*purchaser*) to the said (*vendor*), on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth acquit, release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators or assigns, HE the said (*vendor*), with the licence of

Testatum: *vendor*, with lessor's licence, assigns.

(*b*) If the lease also contains a covenant that the lessee is not to carry on certain trades (insert here):—

A. "AND ALSO that the said (*vendor*) shall not exercise nor permit to be carried on upon any part of the demised premises the trade of an innkeeper, licensed victualler, beer-shopkeeper, slaughterman, currier, tanner, soap maker, melter of tallow, or any noisome trade whatsoever; nor do nor suffer to be done any act or thing on the said demised premises, which might cause a nuisance, or grow to the damage or annoyance of the neighbourhood."

Recital that lessee is not to carry on certain trades on demised premises.

No. II.

*Assignment of a
Leasehold
Messuage for
the residue of
term, with
the Licence of
the Lessor, &c.*

*Habendum to
lessee for
residue of term.*

the said (*lessor*), (testified by his being a party hereto), DOTH by these presents assign unto the said (*purchaser*), ALL, &c. [HERE DESCRIBE *parcels*, and insert general words; *all-estate clause*, and *all-deeds clause*, *ut ante*, No. I., clause 4, p. 244.]

6. TO HAVE AND TO HOLD the said messuage or dwelling-house, and all and singular other the premises hereinbefore described and hereby assigned, with their appurtenances, unto the said (*purchaser*), his executors, administrators and assigns, henceforth for all the unexpired residue of the said term of ninety-nine years, if the said (*names of lives*), or either of them shall so long live; AND for all other the estate, term and interest of him the said (*vendor*) therein, subject to the payment of the rents and performance of the covenants in the said hereinbefore recited indenture of lease reserved and contained. [INSERT *covenants from vendor that lease is valid, ut ante*, No. I., clause 6, p. 245.]

*Covenant from
vendor that with
lessor's licence
he has good
right to assign.*

7. AND ALSO that he the said (*vendor*), with such licence and authority of the said (*lessor*) as aforesaid, now hath in himself good right by these presents to assign the said messuage or dwelling-house and premises unto the said (*purchaser*), his executors, administrators and assigns, for all the now unexpired residue of the said term of ninety-nine years determinable as hereinbefore mentioned, in manner aforesaid. [INSERT HERE *that vendor has paid rents and performed covenants; for quiet enjoyment by purchaser, and for further assurance; and also covenant from purchaser to indemnify vendor from the covenants of the lease, (c) ut ante*, No. I., clauses 8 to 11, inclusive, pp. 246, 247.]

*Covenant from
purchaser not
to assign, &c.,
without licence
from lessor.*

8. AND the said (*purchaser*) doth hereby for himself, his executors and administrators, covenant with the said (*lessor*), his heirs and assigns, that he the said (*purchaser*), his executors, administrators or assigns, will not, at any time during the said term, assign, demise, or underlet, the said messuage or dwelling-house

(c) This covenant is necessary for the protection of the original lessee, who continues liable to the covenants in the lease, notwithstanding he may have assigned his interest, and the lessor has accepted the assignee as his tenant (see *ante*, p. 247, note *h*, and the several cases there referred to.)

and premises, or any part of the same, for the whole or any portion of the said term of ninety-nine years, determinable as aforesaid unto any person or persons whomsoever, without the licence and consent in writing of the said (*lessor*), his heirs and assigns, for that purpose first had and obtained. (*d*)

No. II.

Assignment of a Leasehold Messuage for term, with the Licence of the Lessor, &c.

9. AND FURTHER, that the said (*purchaser*), his executors, administrators and assigns shall and will, in all things during the residue of the said term of ninety-nine years, determinable as aforesaid, well and truly perform the covenants contained in the said hereinbefore recited indenture of lease on the part of the said (*vendor*), his executors, administrators and assigns, to be observed and performed.

To perform the covenants of the lease.

10. PROVIDED ALWAYS, and it is hereby declared and agreed, and particularly the said (*purchaser*) doth hereby grant and declare with and to the said (*lessor*), his heirs and assigns, that if the said yearly rent hereby reserved, or any part thereof, shall be in arrear for the space of thirty days next after any of the days hereinbefore appointed for the payment thereof, being demanded, and no sufficient distress can be found upon the said demised premises; or, if breach shall happen to be made in all, any, or either of the covenants herein contained, on the part of the said (*purchaser*), his executors, administrators or assigns to be observed and performed: THEN and from thenceforth, for all, any, or either of the causes aforesaid, it shall be lawful for the said (*lessor*), his heirs or assigns, into and upon the said demised premises to enter, and the same with the

Proviso of re-entry for breach of covenant.

(*d*) If the lessee is to be restricted from carrying on certain trades upon the premises, insert the following covenant.

B. AND ALSO that the said (*purchaser*), his executors, administrators or assigns will not carry on the trade or business of an inn-keeper, licensed victualler, beer-shopkeeper, slaughterman, currier, tanner, soap maker, melter of tallow, or any noisome trade whatsoever, in or upon any part of the said hereby assigned premises; nor do, or permit to be done, any act or thing whatsoever on the said premises, which may cause a nuisance to the neighbourhood.

Not to carry on certain trades.

No. II. appurtenances to repossess and enjoy in the same manner as if these presents had not been made and executed.

*Assignment of a
Leasehold
Messuage for
the residue of
term, with
the Licence of
the Lessor, &c.*

Covenant from
lessor for quiet
enjoyment by
lessor, subject
to rents and
covenants.

11. AND the said (*lessor*), doth, hereby for himself, his heirs and assigns, covenant with the said (*purchaser*), his executors, administrators and assigns, that the said (*purchaser*), his executors, administrators or assigns, by and under payment of the rents and performance of the covenants herein contained on his and their parts to be paid, observed and performed, shall and may peaceably and quietly have, hold, use, occupy, possess and enjoy the said premises hereby demised, during all the unexpired residue of the said term of ninety-nine years, determinable as aforesaid, without any lawful let, suit, eviction, trouble, interruption, molestation or denial, of or by the said (*lessor*), his heirs or assigns, or any other person or persons whomsoever, rightfully claiming under or in trust for him.

IN WITNESS, &c.

No. III.

ASSIGNMENT OF A LEASEHOLD MESSAGE, PART OF CERTAIN LEASEHOLD PREMISES, THE REMAINDER BEING RETAINED BY THE VENDOR; WITH MUTUAL COVENANTS BY VENDOR AND PURCHASER TO PAY THEIR RESPECTIVE PROPORTIONS OF THE RENT; WITH CROSS POWERS OF DISTRESS, (a) THE VENDOR ALSO COVENANTING TO PRODUCE THE ORIGINAL LEASE OF THE PREMISES.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of original lease for an absolute term of 99 years. 3. That vendor has erected five messuages on the demised premises. 4. That vendor has contracted to sell one of the messuages to purchaser. 5. That upon treaty for purchase it was agreed that purchaser should pay his proportion of the rent of the said premises. 6. Assignment to purchaser subject to his proportion of the rents. 7. Covenant from vendor to pay the remainder of the rent charged on the premises. | <ol style="list-style-type: none"> 8. To indemnify purchaser against rents and covenants relating to the unsold property. 9. Power for purchaser to distrain on remaining premises for all sums of money paid by him in consequence of vendor's default in paying his proportion of the rents. 10. Covenant from vendor to produce lease. 11. Covenant from purchaser to pay his proportion of the rents. 12. Power of distress in default of purchaser paying his proportion of rents. |
|---|--|

1. THIS INDENTURE, made the day of A.D. 185 , Parties.
BETWEEN (vendor) of, &c., of the one part, and (purchaser) of,
&c., of the other part.

(a) A lessee cannot, by assigning part of the demised premises, discharge himself from his original liability to the lessor for the whole rent, any more than he can exonerate himself from such liability by an assignment of the entirety of the premises: (*Bailiff of Ipswich v. Martin*, 1 Roll. Abr. 235; *Orgill v. Kemshead*, 4 Taunt. 642.) For it is not in the power of a lessee, as against his lessor, to divide the contract, and thus apportion the lessor's right of action or put him to several distresses. In such case, therefore, notwithstanding the assignment, Lessee cannot, by assigning part of demised premises, discharge himself from his original liability.

No. III.

Assignment of a
Leasehold
Messuage, part
of certain
Leasehold Pre-
mises, with
mutual
Covenants, &c.

Recital of
original lease
for an absolute
term of ninety-
nine years.

2. WHEREAS by indenture of lease dated on or about the day of in the year 18 , and made between (*lessor*) of, &c., of the one part, and the said (*vendor*) of the other part, the said (*lessor*), for the considerations therein mentioned, demised a certain close or parcel of land, with the appurtenances, of which the piece of land and premises hereinafter described and intended to be hereby assigned form a portion, unto the said (*vendor*), his executors, administrators and assigns, from the day next before the day of the date of the now reciting indenture, for the term of ninety-nine years, at the yearly rent of 50*l.*, payable half-yearly, at Lady-day and Michaelmas-day.

That vendor
has erected five
messuages on
demised
premises.

3. AND WHEREAS the said (*vendor*) hath erected five messuages or dwelling-houses, with requisite offices, on the said close of land hereinbefore referred to.

That vendor has
contracted to
sell one of the
messuages to
purchaser.

4. AND WHEREAS the said (*vendor*) has contracted to sell the said (*purchaser*) one of the said messuages, together with the garden ground and premises thereunto belonging, being No. 2, and hereinafter more particularly described, for the residue of the said term of ninety-nine years, for the sum of 1,275*l.*

That upon
treaty for pur-
chase it was
agreed that
purchaser
should pay his
proportion of
the rent of the
demised
premises.

5. AND WHEREAS at the time of entering into the said contract, it was mutually agreed between the said (*vendor*) and (*purchaser*), that the said (*purchaser*), his executors, administrators or assigns, should pay the yearly rent of 10*l.* as his proportion of the said yearly rent of 50*l.*, and that the residue of the said yearly rent should be paid by the said (*vendor*), his executors, administra-

the original lessee is still liable to be sued for the whole rent, either by the lessor (*Rushden's case*, 1 Dy. 4 b.), or the assignee of the reversion: (*Broom v. Hore*, Cro. Eliz. 633; *Ards v. Watkin*, Cro. Eliz. 657; 2 Platt Leases, 135.) The lessor or assignee of the reversion may also distrain for the whole rent, either on the property assigned or retained, or upon both; but they can only sue the assignee for the rent due in respect of that portion of the premises which has been assigned to him: (*Gamon v. Vernon*, 2 Lev. 231; *Stevenson v. Lombard*, 2 East, 575; *Curtis v. Spitty*, 1 Bing. N. C. 756; S. C., 1 Scott, 737.) For the reasons above-mentioned, therefore, when a lessee assigns a portion of the demised premises it is advisable to give cross powers of distress as in the above form, by which means, in case the lands of either assignor or assignee are distrained upon for the whole rent, the party aggrieved may obtain redress by distraining upon the other party for the amount of rent which the latter ought to have paid.

tors and assigns, in respect of the four remaining messuages or dwelling-houses and premises which are not intended to be hereby assigned; and that the said parties hereto should respectively enter into the covenants respecting the same in manner hereinafter appearing.

No. III.
—
*Assignment of a
Leasehold
Messuage, part
of certain
Leasehold Pre-
mises, with
mutual
Covenants, &c.*

6. NOW THIS INDENTURE WITNESSETH [CONTINUE *testatum*, by which vendor assigns; DESCRIBE *parcels*; INSERT *general words*, and *all-estate clause*, and *habendum*, for *residue of term*, *ut ante*, No. I., clauses 4, 5, pp. 244, 245, and then add] subject nevertheless to the payment of the said yearly rent of 10*l.* by two equal half-yearly payments, on the 29th day of September and the 25th day of March; and also subject to the covenants, stipulations and agreements contained in the said hereinbefore recited indenture of lease, and which, so far as they relate to the said messuage or dwelling-house, garden and premises, are or ought to be observed and performed. [INSERT *covenant from vendor that the lease is a valid lease, and that vendor has paid all the rents and performed all the covenants, ut ante*, No. I., clauses 6, 7, 8, pp. 245, 246.]

—
*Assignment to purchaser
subject to his
proportion of
the rents.*

7. AND ALSO, that the said (*vendor*), his executors, administrators or assigns, shall and will henceforth, from time to time and at all times during the said term, well and truly pay the said yearly rent of 40*l.*, so payable in respect of the four remaining messuages or dwelling-houses which are not intended to be hereby assigned, and also well and truly perform the covenants in the said hereinbefore indenture of lease contained, and which, on the tenant or lessee's part, are or ought to be performed, so far as relates to such messuages or dwelling-houses and premises as aforesaid.

—
*Covenant from
vendor to pay
the remainder
of the rent
charged on the
premises.*

8. AND ALSO that he the said (*vendor*), his heirs, executors or administrators, shall and will, from time to time and at all times, save, protect, keep harmless and indemnify the said (*purchaser*), his executors, administrators and assigns, of and from all evictions, ejectments, distresses, suit or suits at law or in equity, costs, damages and expenses whatsoever, by reason of the non-payment of the said rent of 40*l.*, or non-performance of all, any, or either of the covenants, conditions and agreements contained in the said hereinbefore recited indenture of lease, so far as such covenants

—
*To indemnify
purchaser
against rents
and covenants
relating to the
unsold property.*

No. III. relate to the said messuages or dwelling-houses and premises, which are not intended to be assigned by these presents.

Assignment of a
Leasehold
Messuage, part
of certain
Leasehold Pre-
mises, with
mutual
Covenants, &c.

Power for
purchaser to
distrain on
remaining pre-
mises for all
sums of money
paid by him in
consequence of
vendor's default
in paying his
proportion of
the rents.

9. AND ALSO that in case the said (*purchaser*), his executors, administrators or assigns shall at any time hereafter pay any sum or sums of money, or incur any expenses on account of the said yearly rent of 40*l.* so covenanted to be paid by the said (*vendor*) as aforesaid, THEN and in such case, and so often as the same shall happen, it shall be lawful for the said (*purchaser*), his executors, administrators or assigns, into and upon the said four remaining messuages or dwelling-houses and premises which are not hereby assigned, or any of them, to enter, and then and there to distrain for all and every such sum and sums of money and expenses as the said (*purchaser*), his executors, administrators or assigns, shall so pay or expend, and the distress and distresses then and there found to take, lead, drive away and impound, and in pound to detain and keep, until the same sum and sums of money and expenses incurred in taking and keeping such distress or distresses shall be fully paid and satisfied; and in default of payment thereof in due time after such distress or distresses shall have been so taken as aforesaid, to appraise, sell and dispose of such distress or distresses, or any part thereof, or otherwise to act therein according to due course of law, in like manner as in the case of distress for non-payment of rent on common demise or lease; TO THE INTENT AND PURPOSE that thereby and therewith the said (*purchaser*), his executors, administrators and assigns may be repaid and fully satisfied all such sums of money and expenses as aforesaid.

Covenant from
vendor to pro-
duce lease.

10. AND ALSO that the said (*vendor*) shall and will from time to time and at all times during the continuance of the said term, unless prevented by fire or other inevitable accident, at the request and costs of the said (*purchaser*), his executors, administrators or assigns, produce or show forth to him or them, or to his or their attorney, solicitor, or agent, or counsel, or to such other person or persons as he or they shall direct, as occasion shall require, the said hereinbefore recited indenture of lease, in manifestation, defence and support of the title of the said (*purchaser*), his executors, administrators and assigns, to the said hereby assigned premises; and at such like request and costs, grant true and attested or other

copies, extracts or abstracts of the same indenture; and do and shall permit such copies, extracts or abstracts to be compared with the said original lease. [INSERT HERE *that vendor has good right to assign; for peaceable enjoyment; freedom from incumbrances, and for further assurance, ut ante, No. I., clauses 7, 9, 10, pp. 246, 247.*]

No. III.

Assignment of a Leasehold Messuage, part of certain Leasehold Premises, with mutual Covenants, &c.

10. AND the said (*purchaser*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*vendor*), his executors, administrators and assigns, that he the said (*purchaser*), his executors, administrators or assigns, shall and will, from time to time and at all times during the said term, well and truly pay the said yearly rent of 10*l.*, so agreed to be paid by him or them in respect of the said hereby assigned premises; and also well and truly perform the covenants in the said hereinbefore recited indenture of lease contained, and which, on the tenant or lessee's part, are or ought to be performed, so far as relates to the said hereby assigned premises. AND ALSO that he the said (*purchaser*), his executors or administrators, shall and will from time to time and at all times, save, protect, keep harmless and indemnified the said (*vendor*), his heirs, executors, administrators and assigns, of and from all evictions, ejections, distresses, suit or suits at law or in equity, costs, damages and expenses whatsoever, by reason of the non-payment of the said rent of 10*l.*, or non-performance of all, any or either of the covenants, conditions and agreements contained in the said hereinbefore recited indenture of lease, so far as such covenants relate to the said hereby assigned premises.

Covenant from purchaser to pay his proportion of the rents.

To perform covenants.

To indemnify vendor from rents and covenants in respect of assigned premises.

11. AND MOREOVER, that in case the said (*vendor*), his executors, administrators or assigns, shall at any time hereafter pay any sum or sums of money, or incur any expenses, on account of the said yearly rent of 10*l.* so covenanted to be paid by the said (*purchaser*) as aforesaid, then and in such case, and so often as the same shall happen, it shall be lawful for the said (*vendor*), his executors, administrators or assigns, into and upon the said hereby assigned messuage or dwelling-house and premises to enter, and then and there to distrain for all and every such sum and sums of money and expenses as the said (*vendor*), his executors, administrators or assigns shall so pay or expend, and the distress and distresses then

Power of distress in default of purchaser's paying his proportion of rents.

No. III. and there found, to take, lead, drive, carry away and impound, and
Assignment of a in pound to detain and keep until the same sum and sums of
Leasehold money and expenses incurred in taking and keeping such distress
Messuage, part or distresses shall be fully paid and satisfied; and in default of
of certain payment thereof in due time after such distress or distresses shall
Leasehold Pre- have been so taken as aforesaid, to appraise, sell and dispose of
mises, with such distress or distresses, or any part thereof, or otherwise to act
mutual therein, according to due course of law, in like manner as in the
Covenants, &c. case of distress for non-payment of rent reserved on common
demise or lease, TO THE INTENT AND PURPOSE that thereby and
therewith the said (*vendor*), his executors, administrators and
assigns, may be repaid and fully satisfied all such sums of money
and expenses as aforesaid.

IN WITNESS, &c.

No. IV.

ASSIGNMENT BY LESSEE OF A LEASEHOLD MESSUAGE, FORMING A PORTION OF THE DEMISED PREMISES TO A PURCHASER FOR THE RESIDUE OF THE TERM; THE LESSEE CONCURRING FOR THE PURPOSE OF APPORTIONING THE RENT.

- | | |
|--|--|
| <p>1. Parties.</p> <p>2. Recital that lessor has agreed to concur in assignment for the purpose of apportioning the rent.</p> <p>3. Testatum.</p> <p>4. Further testatum, by which lessor indemnifies the purchaser from</p> | <p>all liability in respect of the rents and covenants of the lease, so far as they relate to the other parts of the demised premises.</p> <p>5. Proviso that indemnity shall not discharge vendor from the payment of the rents, and performance of the covenants of the lease.</p> |
|--|--|

1. THIS INDENTURE, made the day of A. D., 185 , Parties. BETWEEN (*lessee who is the vendor*) of, &c., of the first part, (*lessor*) of, &c., of the second part, and (*under-lessee, who is the purchaser*) of, &c., of the third part. [RECITE lease; that vendor has erected dwelling-houses on demised premises, and contracted to sell one of the dwelling-houses to purchaser; and that it has been agreed that purchaser should pay his proportion of the reserved rents, ut ante, No. III., clauses 2, 3, 4, 5, p. 254.]

2. AND WHEREAS the said (*lessor*), at the request of the said (*vendor*) and (*purchaser*), has agreed to concur in these presents for the purpose of exonerating the messuage or dwelling-house and premises intended to be hereby assigned, from the payment of any greater portion of the said rent of 50*l.*, than the sum of 10*l.*; and also from the covenants, clauses, stipulations and agreements therein contained, so far as the same relate to those portions of

Recital that lessor has agreed to concur in assignment for the purpose of apportioning the rent.

No. IV.
*Assignment by
 Lessee
 of a Leasehold
 Message
 forming portion
 of Demised
 Premises to a
 Purchaser
 for the residue
 of term, &c.
 Testatum.*

the said demised premises, which are not intended to be assigned by these presents.

3. NOW THIS INDENTURE WITNESSETH [CONTINUE *testatum* by which *vendor* assigns; DESCRIBE *parcels*; INSERT *general words*; and *all-estate clause*, and *habendum for residue of term*, subject to the yearly rent of 10*l.*, and the covenants of the original lease, *ut ante*, No. III., clause 6, p. 255. THEN ADD covenants from *vendor* that lease is a valid lease, and that *vendor* has paid all the rents and performed all the covenants, ut ante, No. I., clauses 6, 7, 8, pp. 245, 246.]

Further
*testatum by
 which lessor
 indemnifies the
 purchaser from
 all liabilities in
 respect of the
 rents and
 covenants
 of the lease so
 far as they
 relate to other
 parts of the
 demised
 premises.*

4. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said recited agreement, and in consideration of the sum of 5*s.* paid by the said (*purchaser*) to the said (*lessor*) on the execution of these presents, the receipt of which is hereby acknowledged, HE the said (*lessor*), (at the request and by the direction of the said (*vendor*), testified by his being a party hereto), DOTH hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his executors, administrators and assigns, that he the said (*lessor*), his executors, or administrators, shall and will, from time to time and at all times hereafter, save harmless and keep indemnified the said (*purchaser*), his executors, administrators and assigns, of, from, and against all evictions, ejectments, distresses, forfeitures, cause and causes of forfeiture, actions or suits, either at law or in equity, for or by reason of the nonpayment of the said rents of 50*l.*, or non-observance or non-performance of all or any of the covenants, conditions or agreements of the said indenture of lease of the day of reserved and contained, so far as the same relate to the premises comprised in the same indenture of lease which are not intended to be hereby assigned.

Provide that
*indemnity shall
 not discharge
 vendor from the
 payment of the
 rent, and
 performance of
 the covenants of
 the lease.*

5. PROVIDED ALWAYS, that nothing herein contained shall discharge the said (*vendor*), his executors, administrators or assigns, from the payment of any part of the said sum of 50*l.*, or the covenants, clauses, stipulations and agreements in the said indenture of the day of contained; or to discharge the said premises hereby assigned from the covenants, clauses, stipulations

and agreements therein contained, to any greater extent than the same are expressly exonerated by these presents. [INSERT covenant from purchaser to perform covenants, and to indemnify vendor from rents and covenants in respect of assigned premises, with power of distress in default of purchaser's paying his proportion of the rents, *ut ante*, No. III., clauses 10, 11, pp. 256, 257.]

No. IV.

Assignment by
Lessee
of a Leasehold
Messuage
forming portion
of Demised
Premises to a
Purchaser
for the residue
of term, &c.

IN WITNESS, &c.

No. V.

ASSIGNMENT BY MORTGAGEE AND MORTGAGOR OF LEASEHOLD PREMISES HELD FOR THE RESIDUE OF A TERM OF NINETY-NINE YEARS, DETERMINABLE ON THREE LIVES, TO A PURCHASER, WITH USUAL COVENANTS. VARIATION WHERE A POLICY OF ASSURANCE UPON ONE OF THE LIVES, WHEREON THE TERM IS DETERMINABLE, IS ALSO ASSIGNED TO THE PURCHASER.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of mesne assignments. 3. Of underlease, whereby mortgagor mortgages the premises. 4. Of contract to sell. 5. That principal is still due, but that all interest has been paid. 6. Testatum: mortgagor assigns, and mortgagee surrenders his term in leasehold premises. 7. Habendum to purchaser for residue of term. 8. Covenant from mortgagee that he has done no act to incumber. 9. That mortgagor has good right to assign. | <ol style="list-style-type: none"> 10. That all rents have been paid, covenants performed, and premiums on policy of assurance kept up. 11. For quiet enjoyment and freedom from incumbrances. 12. For further assurance. <p style="text-align: center;">—</p> <p style="text-align: center;"><i>Additional Clauses.</i></p> <ol style="list-style-type: none"> A. Recital that a policy of assurance has been effected upon one of the lives upon whose decease the term is determinable. B. Further testatum, assigning policy of assurance. C. Habendum, with power of attorney. |
|--|---|

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*vendor mortgagor*), of, &c., of the first part, (*mortgagee*),
of, &c., of the second part, and (*purchaser*), of, &c., of the third
part. [RECITE ORIGINAL LEASE for ninety-nine years, determinable
on three lives, *ut ante*, No. I., clause 2, p. 243.]

Recital
of mesne
assignments.

2. AND WHEREAS, by virtue of divers mesne assignments, and
other acts and assurances in the law, and ultimately by a certain
indenture of assignment dated the day of and made
between (*assignor*) of the one part, and the said (*vendor*) of the

other part, the said messuage or dwelling-house, garden and premises, became vested in the said (*vendor*) for all the residue of the said term of ninety-nine years, determinable as aforesaid.

No. V.

*Assignment
by Mortgagee
and Mortgagor
of Leasehold
Premises, &c.*

3. AND WHEREAS by indenture dated the day of , and made between the said (*vendor*) of the one part, and the said (*mortgagee*) of the other part, the said (*vendor*) demised the said messuage or dwelling-house and premises unto the said (*mortgagee*), his executors, administrators, and assigns, ALL the then unexpired residue of the said term of ninety-nine years, determinable as aforesaid, wanting the last day thereof, (a) subject nevertheless to a proviso for redemption, and for making void the now reciting indenture, on payment by the said (*vendor*), his executors, administrators or assigns, unto the said (*mortgagee*), his executors, administrators or assigns, of the sum of 600*l.*, and interest at the rate of 5*l.* for every 100*l.* by the year, at the time and in manner therein mentioned, but in payment whereof default was made.

*Underlease.
whereby vendor
mortgages the
premises.*

4. AND WHEREAS the said (*vendor*) has contracted to sell the said policy of assurance, and also the said messuage or dwelling-house and premises, unto the said (*purchaser*), for the residue of the said term of ninety-nine years, determinable as aforesaid, free from all incumbrances, excepting the rents and covenants contained in the said hereinbefore recited indenture of lease, on the tenant or lessee's part to be paid, observed and performed, for the sum of 1,250*l.*

*Of contract to
sell.*

(a) If a policy of assurance upon one of the lives whereon the lease is determinable has been assigned, insert here—

A. AND WHEREAS by the now reciting indenture a policy of assurance for the sum of £ , which the said (*vendor*) had effected in the Law Property Assurance and Trust Society upon the life of (*name of life assured*), one of the lives upon whose decease the said term of ninety years in the said premises is determinable, was assigned by the said (*vendor*) unto the said (*mortgagee*), his executors, administrators and assigns, subject to the proviso for redemption as hereinbefore mentioned.

*Recital that a
policy of
assurance has
been effected
upon one of the
lives upon
whose decease
the term is
determinable.*

No. V.

*Assignment
by Mortgagee
and Mortgagor
of Leasehold
Premises, &c.*

That principal
is still due, but
that all interest
has been paid.

First testatum:
mortgagor
assigns, and
mortgagee
surrenders his
term in lease-
hold premises.

5. AND WHEREAS the said principal sum of 600*l.* still remains due from the said (*vendor*) to the said (*mortgagee*) upon his said recited mortgage security, but all interest for the same has been paid up to the day of the date hereof, as the said (*mortgagor*) doth hereby acknowledge.

6. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of 600*l.* sterling paid by the said (*purchaser*) to the said (*mortgagee*) on the execution hereof (at the request and by the direction of the said (*vendor*), testified by his being a party hereto), the receipt of which, and that the same is in full satisfaction and discharge of all moneys owing to him in respect of his said recited mortgage security, the said (*mortgagee*) doth hereby acknowledge, and therefrom doth release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; and also the said (*vendor*), his heirs, executors, and administrators; AND ALSO in consideration of the further sum of 650*l.* sterling, the residue of the said purchase-money, at the same time as aforesaid paid by the said (*purchaser*) to the said (*vendor*), the receipt and payment of which said two several sums of 600*l.* and 650*l.*, making together the sum of 1,250*l.*, the purchase-money for the said premises, the said (*vendor*) doth hereby acknowledge, and therefrom doth release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*) DOTH by these presents assign and transfer, and for the purpose of merging such portion of the said term as is now vested in the said (*mortgagee*), HE the said (*mortgagee*) (at the request and by the direction of the said (*vendor* and *purchaser*), testified as aforesaid, DOTH by these presents surrender and yield up, and also assign, unto the said (*purchaser*), ALL, &c. [HERE DESCRIBE *parcels*], and all rights, members, privileges and appurtenances to the said messuage or dwelling-house, garden and premises, belonging or appertaining; AND all the estate, right, title and interest, both legal and equitable, of them the said (*vendor*) and (*mortgagee*) therein; AND ALSO the said hereinbefore mentioned indenture of lease, and all other deeds and writings relating to the title of the said premises in the possession of the said

(mortgagor) and (mortgagee), or either of them, or which the said (mortgagor) can procure without suit.

No. V.

Assignment
by Mortgagee
and Mortgagor
of Leasehold
Premises, &c.

7. TO HAVE AND TO HOLD the said messuage or dwelling-house, garden, and all and singular other the premises and hereditaments hereinbefore described and hereby assigned, with their appurtenances, unto the said (*purchaser*), his executors, administrators and assigns, henceforth, for all the rest, residue and remainder of the said term of ninety-nine years, determinable as hereinbefore mentioned; and also subject to the rents and covenants so as aforesaid reserved and contained in the original lease of the said premises. (*b*)

Habendum to
purchaser for
residue of term.

(*b*) If the policy of assurance is to be assigned, insert here the two following clauses:—

B. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, HE the said (*mortgagee*) (at the request and by the direction of the said (*mortgagor*), testified as aforesaid), DOTH by these presents assign and transfer unto the said (*purchaser*), ALL THAT deed poll or instrument in writing purporting to be and being a policy of assurance of and in the Law Property Assurance and Trust Society, under the common seal and hands of two of the directors of the said society, whereby the payment of 700*l.* sterling is assured to be paid to the said (*vend*or), his executors, administrators or assigns, within three calendar months next after proof of the death of the said (*name of life assured*), in consideration of the annual premium of £ , together with all sum and sums of money to become due or recoverable upon or by virtue of the said policy of assurance, and all the estate, right, title and interest, both legal and equitable, of them the said (*vend*or) and (*mortgagee*) therein.

Further
testatum,
assigning policy
of assurance.

C. TO HAVE, HOLD, RECEIVE AND TAKE the said deed poll, policy of assurance, and all and singular other the premises hereby lastly assigned, and all benefit and advantages to be received thereon, unto the said (*purchaser*), his executors, administrators and assigns, to and for his and their own absolute use and benefit; with full power and authority for the said (*purchaser*), his executors and

Habendum,
with power of
attorney.

No. V.

Assignment
by Mortgagee
and Mortgagor
of Leasehold
Premises, &c.

Covenant from
mortgagee that
he has done no
act to incumber.

8. AND the said (*mortgagee*) doth hereby for himself, his executors and administrators, covenant with the said (*purchaser*), his executors, administrators and assigns, that he the said (*mortgagee*) hath not done, committed, or permitted any act, deed, matter or thing whatsoever, whereby or by means whereof the said messuage or dwelling-house, garden and premises, or the said policy of assurance, can be incumbered or prejudicially affected. [INSERT covenant from vendor that the lease is valid and subsisting, *ut ante*, No. I., clause 6, p. 245.]

That mortgagor
had good right
to assign.

9. AND ALSO, that (notwithstanding any such act as aforesaid) the said (*mortgagor*) and (*mortgagee*), or one of them, now have or hath in themselves or himself good right to assign, surrender, or otherwise assure the said messuage or dwelling-house, garden, policy of assurance, and premises, unto the said (*purchaser*), his executors, administrators and assigns in manner aforesaid, according to the true intent and meaning of these presents.

administrators, as the true and lawful attorney or attorneys irrevocable of them the said (*vendor*) and (*mortgagee*), and of each of them, and in their or either of their names or name, or in the names of their or either of their executors or administrators, but for the sole benefit and at the sole risk and costs of the said (*purchaser*), his executors or administrators, to ask, demand, sue for, recover and receive, of and from the said Assurance Society, or other the person or persons to whom it shall or may belong to pay the same, the said sum of 700*l.*, and all other sum and sums of money that may become due and payable for or in respect of the said policy of assurance, and upon receipt thereof to give good and sufficient releases and discharges for the same; and one or more attorney or attorneys for all, any or either of the purposes aforesaid, to substitute and appoint, and such substitution and appointment at pleasure to revoke, they the said (*mortgagor*) and (*mortgagee*) hereby ratifying and confirming, and promising and agreeing to ratify and confirm, all and whatsoever the said (*purchaser*), his executors or administrators, or his or their attorney or attorneys, shall lawfully do or cause to be done in the premises by virtue of these presents."

10. AND ALSO, that the yearly rents, covenants, conditions, and agreements reserved and contained in the said hereinbefore recited indenture of lease, on the part of the lessee to be paid, observed and performed, have been duly paid, observed and performed accordingly; and also that all premiums in respect of the said policy of assurance have been regularly paid up to the day of the date hereof.

No. V.

*Assignment
by Mortgagee
and Mortgagor
of Leasehold
Premises, &c.*

That all rents
have been paid,
covenants
performed, and
premiums of
policy of
assurance duly
kept up.

For quiet
enjoyment, and
freedom from
incumbrances.

11. AND FURTHER, that subject to the payment of the rent and observance and performance of the covenants, conditions and agreements reserved and contained in the said hereinbefore recited indenture of lease, and which, on the tenant or lessee's part, are or ought to be observed, performed, fulfilled and kept, it shall be lawful for the said (*purchaser*), his executors, administrators or assigns, from time to time, and at all times during the continuance of the said term of ninety-nine years, determinable as aforesaid, to enter into and upon, have, hold, use, occupy, possess and enjoy, the said messuage or dwelling-house, garden and premises, and to receive and take the rents, issues and profits thereof, to and for his and their own absolute use and benefit; AND ALSO to hold and enjoy the said policy of assurance hereby assigned, without any lawful let, suit, eviction, ejection, interruption, molestation, denial or disturbance, of or by the said (*mortgagor*), or any other person or persons whomsoever rightfully claiming under him; AND that freely and clearly exonerated and discharged or otherwise, by the said (*mortgagor*), his heirs, executors or administrators, at his or their own costs, well and sufficiently protected, saved harmless and kept indemnified of, from and against all former and other estates, rights, titles, liens, charges and incumbrances whatsoever, made or occasioned by the said (*mortgagor*), or any other person or persons whomsoever rightfully claiming under him, except the rents and covenants contained in the original lease of the said premises hereinbefore recited.

12. AND MOREOVER, that the said (*vendor*), and all persons whomsoever rightfully claiming under him, shall and will from time to time, and at all times hereafter, at the request and costs of the said (*purchaser*), his executors, administrators or assigns, enter into, execute and perfect all such further and other lawful

For further
assurance.

No. V.

Assignment
by Mortgagee
and Mortgagor
of Leasehold
Premises, &c.

and reasonable acts, deeds, assignments and assurances whatsoever, for the further, better, or more perfectly or satisfactorily assigning, assuring and confirming the said messuage or dwelling-house, garden and premises, with the appurtenances, unto the said (*purchaser*), his executors, administrators and assigns, for all the then residue of the said term of ninety-nine years, determinable as aforesaid; as also for absolutely vesting the said policy of assurance in the said (*purchaser*), his executors, administrators and assigns, according to the true intent and meaning of these presents, as the said (*purchaser*), his executors, administrators or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed.

IN WITNESS, &c. (*b*)

Practical
observations.

(*b*) It is not necessary to insert a covenant from a purchaser to indemnify a vendor from the covenants of a lease, where such vendor is only an assignee of a term, who is only liable for such breaches of covenant as are incurred during such time as he continues in possession of the demised premises, and is in no wise responsible for those incurred afterwards: (*Pitcher v. Tovey*, Salk. 81; S. C., by name of *Tovey v. Pitcher*, 3 Lev. 295; *Chancellor v. Poole*, Doug. 764; *Churchwardens of St. Saviour's v. Smith*, 3 Bur. 1271; S. C., 1 W. Bla. 151; *Lereux v. Nash*, Str. 1221; *Taylor v. Shum*, 1 Bos. & Pull. 21; *Odell v. Wake*, 3 Camp. N. P. C. 394), in which respect he differs from an original lessee, who remains liable to all express covenants entered into by him during the continuance of the term, notwithstanding he may have assigned over the term to a third person, and the acceptance by the lessor of such assignee as his tenant: (*Barnard v. Godscall*, Cro. Jac. 309; *Brett v. Cumberland*, *ib.* 522; *Ventrice v. Goodcheap*, 1 Roll. Abr. 522, pl. 1; *Fisher v. Ameers*, 1 Brownl. 20; *Thursby v. Plant*, 1 Sid. 402, 427; *Boulton v. Cann*, Freem. 337; *Ashurst v. Mingay*, T. Jones, 144; *Auriol v. Mills*, 4 T. R. 94; *Orgill v. Kemshead*, 4 Taunt. 642.)

No. VI.

ASSIGNMENT OF LEASEHOLD PREMISES FOR THE RESIDUE OF A TERM OF NINETY-NINE YEARS, DETERMINABLE ON THREE LIVES, BY THE ASSIGNEES OF AN INSOLVENT DEBTOR; A MORTGAGEE OF THE PREMISES AND THE INSOLVENT CONCURRING. (a)

- | | |
|--|--|
| 1. Parties.
2. Recital of the mortgage.
3. That insolvent will concur in assignment. | 4. Testatum, by which mortgagee, assignees, and insolvent assign.
5. Habendum to purchaser for residue of term. |
|--|--|

1. THIS INDENTURE, made the day of A.D. 185 , Parties. BETWEEN (*mortgagor*), of, &c., of the first part, (*official assignee, and creditors' assignee*), of the second part, (*insolvent*), of, &c., of the third part, and (*purchaser*), of, &c., of the fourth part. [RECITE *original indenture of lease, ut ante*, No. I., clause 2, p. 243.]

2. AND WHEREAS by indenture dated on or about the day of , and made between the said (*insolvent*) of the one part, and the said (*mortgagee*) of the other part, the said (*insolvent*) did thereby assign unto the said (*mortgagee*), his executors, administrators and assigns, the messuage or dwelling-house and premises hereinafter described, for all the then residue of the said term of ninety-nine years, determinable and renewable as aforesaid; subject nevertheless to a proviso for redemption and re-assignment, on payment by the said (*insolvent*), his executors, administrators or assigns, to the said (*mortgagee*), his executors, administrators and assigns, of the sum of 480*l.*, and interest at the rate of 4*l.* for

(a) See observations as to leasehold estates of insolvents, *ante*, page 156, note (a).

No. VI.

Assignment of
Leasehold
Premises for
Residue of Term
determinable on
Three Lives, by
Assignees of
an Insolvent
Debtor, &c.

every 100*l.* by the year, at the time and in manner therein mentioned, but in payment whereof default was made. [RECITE insolvent's petition and appointment of official assignee; ALSO, order for protection and appointment of creditors' assignee; ALSO, that assignee had convened a meeting of the creditors, who had resolved to sell the insolvent's real estate, and that assignees had put up the premises for sale, and that the purchaser had been declared the purchaser at the sum of 925*l.*: AND ALSO, that there was then due to the mortgagor, for principal and interest, the sum of 515*l.*; *ut ante*, No. XXVIII., clauses 5 to 9 inclusive, pp. 157 to 162.]

That insolvent
will concur in
assignment.

3. AND WHEREAS the said (*insolvent*) hath agreed to concur in these presents in manner hereinafter appearing.

Testatum, by
which mort-
gagee, assignees,
and insolvent
assign.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of 515*l.* sterling, paid by the said (*purchaser*) to the said (*mortgagee*), on the execution hereof, with the privity and approbation of the said (*provisional assignee, and creditors' assignee*) (testified by their being parties hereto and concurring herein), the receipt of which the said (*mortgagee*) hereby acknowledges, and also that the same is in full satisfaction and discharge of all moneys due and owing to him upon his said recited mortgage security, and therefrom doth release, exonerate, and for ever discharge the said (*purchaser*), his executors, administrators and assigns, and also the said mortgaged premises; ALSO, in consideration of the further sum of 410*l.* sterling, at the same time as aforesaid paid by the said (*purchaser*) to the said (*official assignee*), the receipt and payment in manner aforesaid of which said several sums of 515*l.* and 410*l.*, making together the sum of 925*l.*, the purchase-money of the said messuage or dwelling-house and premises, the said (*official assignee and creditors' assignee*) do hereby acknowledge, and therefrom DO, and each of them DOTH, release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; AND ALSO, in consideration of the sum of 10*s.* sterling, at the same time as aforesaid paid by the said (*purchaser*) to the said (*insolvent*), the receipt whereof is hereby acknowledged; HE the said (*mortgagee*) (at the request and by the direction of the said (*official assignee, and creditors' assignee*), testified as aforesaid), DOTH by these presents assign and transfer,

the said (*provisional assignee and creditors' assignee*) DO by these presents assign and transfer, and the said (*insolvent*) DOTH by these presents ratify and confirm, unto the said (*purchaser*), ALL, &c. [HERE DESCRIBE *parcels*], and all rights, members and appurtenances to the said messuage or dwelling-house and premises belonging or appertaining; AND all the estate, right, title and interest, both legal and equitable, of them the said (*mortgagee*), (*official assignee*), (*creditors' assignee*), and (*insolvent*) therein: TOGETHER with the said hereinbefore recited indenture of lease, and all other deeds and writings relating exclusively to the title of the said hereby assigned premises, in the possession of the said (*mortgagee*), (*official assignee*), (*creditors' assignee*), and (*insolvent*), or which the said (*insolvent*) can obtain without suit.

No. VI.

Assignment of
Leasehold
Premises for
Residue of Term
determinable on
Three Lives, by
Assignees of
an Insolvent
Debtor, &c.

5. TO HAVE AND TO HOLD the said messuage or dwelling-house, and all and singular other the premises hereinbefore described and hereby assigned, with their appurtenances, unto the said (*purchaser*), his executors, administrators and assigns, from henceforth for all the residue of the said term of ninety-nine years, determinable and renewable as aforesaid, subject nevertheless to the payment of the rents, and performance of the covenants, conditions and agreements reserved and contained in the said recited indenture of lease. (b) [INSERT HERE *covenant from mortgagee and assignees with purchaser that they have done no act to incumber (but substituting for "the heirs and assigns," "the executors, administrators and assigns of the purchaser")*; *ut ante*, No. XXVII., clause 11, p. 163.]

Habendum to
purchaser for
residue of term.

IN WITNESS, &c.

(b) The insolvent will be discharged from all liability under the lease by the assignees having taken possession of the same. (See *ante*, note (a), p. 157.) *Practical remarks.* Consequently, the purchaser cannot be required to enter into a covenant to indemnify the insolvent from these liabilities.

No. VII.

ASSIGNMENT OF A LEASEHOLD MESSUAGE AND PREMISES FOR THE RESIDUE OF A TERM OF NINETY-NINE YEARS, BY TWO OF THREE EXECUTORS AND RESIDUARY LEGATEES TO A TRUSTEE, FOR THE BENEFIT OF THE THIRD EXECUTOR AND RESIDUARY LEGATEE, AS HIS PORTION OF THE RESIDUARY ESTATE.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of will devising residuary estate, and of the death of testator and the probate of his will. 3. Of agreement that premises shall be assigned in trust for third executor's benefit, in full satisfaction of all claims upon the residuary estate. 4. Testatum. | <ol style="list-style-type: none"> 5. Habendum to trustee for residue of term upon trust for third executor. 6. Recital that will relates as well to title of other property of testator, and of agreement that the two executors shall retain the probate copy. 7. Covenant to produce probate copy of will. |
|--|--|

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*two executors and residuary legatees*), of, &c. (two of
the three executors and residuary legatees named and appointed in
and by the will of (*testator*), late of, &c., esquire, &c., deceased),
of the first part, (*third executor and residuary legatee*), of, &c., of
the second part, and (*trustee*), of, &c., of the third part.

Recital of will
devising
residuary estate.

2. WHEREAS the said (*testator*), being entitled to the messuage
or dwelling-house, garden and premises hereinafter described, for
the residue of a certain term of ninety-nine years absolute, by his
last will, dated on or about the day of , in the year
18 , after making certain devises and bequests, but no specific
mention of the premises hereinbefore referred to, gave, devised
and bequeathed all the rest, residue and remainder of his mes-
suages, lands, tenements and hereditaments, whatsoever and where-

soever, and of what nature, tenure or quality soever, and also all his personal estate and effects, unto the said (*two executors*) and (*third executor*), and their respective heirs, executors, administrators and assigns, according to the several natures and qualities of the premises, in equal shares as tenants in common; and appointed the said (*two executors*) and (*third executor*) joint executors of his said will; AND WHEREAS the said (*testator*) died on or about the day of in the year 18 , without having altered or revoked his said will, which was duly proved by his said executors therein-named, in the Prerogative Court of the Archbishop of Canterbury, on the day of in the year 18 .

No. VII.

Assignment
of a Leasehold
Messuage
and Premises
for the residue
of a Term
of Ninety-nine
Years, &c.

Of death of
testator, and
probate of his
will.

3. AND WHEREAS it has been agreed that the said (*third executor*) shall receive and take the said messuage or dwelling-house, garden and premises, as his distributive share of the said residuary estate and effects of the said (*testator*), and that the same shall be assigned upon trusts for his benefit in manner hereinafter appearing; in consideration whereof the said (*third executor*) hath agreed to execute a sufficient release and conveyance of all the remaining residuary estate and effects, by indenture intended to bear even date and to be executed simultaneously herewith.

Of agreement
that premises
shall be assigned
in trust for
third executor's
benefit, in full
satisfaction of
all claims upon
the residuary
estate.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, for the considerations aforesaid, and also for and in consideration of the sum of 5s. sterling, paid by the said (*trustee*) unto the said (*two executors*), and (*third executor*), on the execution hereof, the receipt of which is hereby acknowledged, THEY the said (*two executors*) and (*third executor*) DO by these presents assign; and the said (*third executor*) DOTN by these presents also ratify and confirm, unto the said (*trustee*), ALL [DESCRIBE *parcels*]; (all which said premises, by a certain indenture dated the 12th day of May, 1825, were granted and demised by (*lessor, esquire*), to (*A. B., gentleman*), father of the said (*testator*), deceased, for the term of ninety-nine years, at and under the yearly rents and covenants therein contained; and which said premises were bequeathed by the said (*A. B.*), by his will, dated the 4th day of August, 1830, unto the said (*testator*), for all the then residue of the said term, who entered into the possession of the same on the decease of the said (*A. B.*),

Testatum.

No. VII.

Assignment
of a Leasehold
Messuage
and Premises
for the residue
of a Term
of Ninety-nine
Years, &c.

which took place some time in the year 1831.) AND all outhouses, offices, buildings, courtlages, yards, gardens, orchards, ways, waters, watercourses, sinks, sewers, gutters, drains, lights, easements, emoluments, profits, privileges, commodities, advantages, rights, members and appurtenances whatsoever to the said messuage or dwelling-house, garden or premises, belonging or appertaining, or usually held, occupied or enjoyed therewith; and all the estate, right, title and interest, both legal and equitable, of them the said (*two executors*) and (*third executor*) therein; TOGETHER with all deeds, evidences and writings relating to the title of the said premises (excepting the probate copy of the said hereinbefore recited will), in the possession of the said (*two executors*) and (*third executor*), or either of them, or which they or either of them can procure with suit.

Habendum to
trustee for
residue of term
upon trust for
third executor.

5. TO HAVE AND TO HOLD the said messuage or dwelling-house, garden, and all and singular other the premises hereinbefore described, and hereby assigned, with their appurtenances, unto the said (*trustee*), his executors, administrators and assigns, from henceforth for all the rest, residue and remainder of the said term of ninety-nine years, and for all other the estate, term and interest of them the said (*two executors*) and (*third executor*) therein, SUBJECT NEVERTHELESS to the payment of the rent and performance of the covenants, conditions and agreements, in the said hereinbefore recited indenture of lease reserved and contained; UPON TRUST nevertheless, and for the sole use and benefit of the said (*third executor*), his executors, administrators and assigns, and to be assigned and disposed of from time to time as he or they shall direct, and upon and for no other trust, end, intent or purpose whatsoever. [INSERT COVENANT *from executors with trustee that they have done no act to incumber, ut ante*, Part II., No. V., clause 6, p. 61.]

Recital that
will relates as
well to title of
other property
of testator, and
of agreement
that the two
executors shall
retain the
probate copy.

7. AND WHEREAS the said hereinbefore recited will relates as well to the remaining residuary estate of the said (*testator*), deceased, as to the said premises hereby assigned, and it hath been agreed that the said (*two executors*) should retain the probate copy of the said will, upon their entering into a covenant for the production of the same, in manner hereinafter appearing.

8. NOW THIS INDENTURE FURTHER WITNESSETH, and the said (*two executors*) do hereby for themselves, their executors and administrators, jointly and severally covenant, promise and agree, with and to the said (*trustee*), his executors, administrators, and assigns, that they the said (*two executors*), or the survivor of them, his executors or administrators, shall and will, from time to time and at all times hereafter (unless prevented by fire or other inevitable accident), at the request and costs of the said (*third executor*), his executors, administrators or assigns, or of the said (*trustee*), his executors, administrators or assigns, produce and show forth to them, or either of them, their or either of their executors, administrators or assigns, or unto their or his attorney, solicitor, agent or counsel, or before any court or courts of law or equity, or commission for the examination of witnesses, or otherwise, as occasion shall require, the said probate copy of the said hereinbefore recited will of the said (*testator*), deceased, in manifestation, defence and support of the title of the said (*trustee*) his executors, administrators and assigns, or of the said (*third executor*), his executors, administrators or assigns, to the said mesuage or dwelling-house, garden and premises hereby assigned, and at such like request and costs as aforesaid, furnish him and them with true and attested or other copies, extracts or abstracts, and permit the same to be examined and compared with the original.

No. VII.

—
Assignment
of a Leasehold
Mesuage
and Premises
for the residue
of a Term
of Ninety-nine
Years, &c.

—
Covenant to
produce probate
copy of will.

IN WITNESS, &c.

No. VIII.

RELEASE AND ASSIGNMENT OF ONE MOIETY OF THE GENERAL
RESIDUARY ESTATE BY ONE TENANT IN COMMON TO HIS
COMPANION IN THE TENANCY.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of will devising premises to vendor and purchaser as tenants in common. 3. Of agreement to purchase vendor's share. 4. Testatum by which vendor conveys and assigns. | <ol style="list-style-type: none"> 5. Habendum. 6. Covenant from vendor that he has good right to release and assign. 7. For quiet enjoyment and freedom from incumbrances. 8. For further assurance. |
|--|---|

13 folios 20 words.

Parties

1. THIS INDENTURE, made the day of , A.D. 185 ,
BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*), of
&c., of the other part.

Recital of will
devising
premises to
vendor and
purchaser as
tenants in
common.

2. WHEREAS (*testator*), late of, , esquire, deceased, by his
last will, dated on or about the 27th day of March, in the year 1848,
after making certain devises and bequests of his real and personal
estate, devised and bequeathed all the residue and remainder of
his real and personal estate unto the said (*vendor*) and (*purchaser*),
and their respective heirs, executors, administrators and assigns,
according to the several natures and qualities of the said premises,
in equal shares as tenants in common. AND the said (*testator*)
appointed (*names of executors*), joint executors in trust of his said
will, which, he having died on the 24th day of January last, without
having altered or revoked, was duly proved by his said executors
in the Prerogative Court of the Archbishop of Canterbury, on the
24th day of June following.

3. AND WHEREAS the said (*vendor*) has contracted to sell his share in the said residuary estate and effects to the said (*purchaser*) for the sum of 2,999*l*.

No. VIII.
Release and
Assignment of
one Moiety
of the general
Residuary
Estate, &c.

4. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of 2,999*l*. sterling, this day paid by the said (*purchaser*) to the said (*vendor*), the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth by these presents release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*) DOTN by these presents grant, bargain, sell, release, assign, transfer, set over and confirm unto the said (*purchaser*), his heirs, executors, administrators and assigns, according to the respective natures and qualities of the premises, ALL THAT the one equal undivided moiety, part or share of him the said (*vendor*), of and in all and singular the messuages, lands, tenements and hereditaments whatsoever and wheresoever, and of what tenure, nature, or quality soever, and all rights, members and appurtenances thereunto belonging. AND ALSO, of and in all the goods, chattels, rights, credits, moneys and securities for money, and all and singular other the residuary estate and effects comprised in and devised by the said hereinbefore recited will of the said (*testator*), deceased; and all the estate, right, title and interest, both legal and equitable, of him the said (*vendor*) therein. AND ALSO, of and in all deeds, evidences and writings relating to the title of the said residuary estate and premises.

Of agreement
to purchase
vendor's share.
Testatum, by
which vendor
conveys and
assigns his
share in the
residuary estate.

5. TO HAVE AND TO HOLD the said messuages, lands, tenements, goods, chattels, rights, credits, moneys and securities for money, and all and singular other the residuary estate and premises hereby granted, released and assigned, with their appurtenances, unto and to the use of the said (*purchaser*), his heirs, executors, administrators and assigns, according to the respective natures and qualities of the same premises, absolutely and for ever; with full power for the said (*purchaser*), his executors or administrators, as the attorney or attorneys irrevocable of him the said (*vendor*), to sue for, recover and receive the said residuary estate and premises, and to give effectual releases and discharges for the same, in the name of him the said (*vendor*), or otherwise.

Habendum

No. VIII.

*Release and
Assignment of
one Moiety
of the general
Residuary
Estate, &c.*

Covenant from
vendor that he
has good right
to convey and
assign.

6. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs, executors, administrators and assigns, that (notwithstanding any act done or permitted by the said (*vendor*) or the said *testator*), deceased, to the contrary), he the said (*vendor*) now hath in himself good right by these presents to grant, release and assign his estate and interest in the said residuary estate and premises hereby released, and also assigned in manner aforesaid, according to the true intent and meaning of these presents.

For quiet
enjoyment and
freedom from
incumbrances.

7. AND ALSO, that (notwithstanding any such act as aforesaid) the same residuary estate and premises, according to the respective natures and qualities thereof, shall be held and enjoyed accordingly, without let, eviction, denial or disturbance, of or by the said (*vendor*), or any or other person or persons whomsoever rightfully claiming under him or the said (*testator*), deceased, and that free from all estates, rights, titles, liens, charges or incumbrances whatsoever, made and created by the said (*vendor*) or the said (*testator*), deceased, or any other person whomsoever rightfully claiming under them or either of them.

For further
assurance.

8. AND MOREOVER, that the said (*vendor*), and all persons whomsoever rightfully claiming any estate or interest in the said residuary estate and premises, under or in trust for him, shall and will from time to time, and at all times hereafter, at the request and costs of the said (*purchaser*), his heirs, executors, administrators or assigns, enter into, execute and perfect all such further assurances for the further, better, more perfectly or satisfactorily conveying, releasing, assigning, assuring and confirming the said residuary estate and premises, hereby granted, released and assigned, unto the said (*purchaser*), his heirs, executors, administrators and assigns, according to the respective natures and qualities of the said premises, and the true intent and meaning of these presents, as the said (*purchaser*), his heirs, executors, administrators or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed.

IN WITNESS, &c.

No. IX.

ASSIGNMENT OF GROUND-RENTS BY THE REVERSIONER TO A PURCHASER, WITH USUAL COVENANTS FOR TITLE, THE PREMISES BEING DEMISED TO THE PURCHASER TO ENABLE HIM TO RECOVER THEM.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of lease whereby ground-rents are reserved. 3. Of contract for purchase. 4. Of agreement to demise premises out of which rents are issuing. 5. Testatum. 6. Habendum. | <ol style="list-style-type: none"> 7. Covenant from vendor that lease is valid and subsisting. 8. That he has good right to grant, demise, and assign ground-rents. 9. For peaceable enjoyment and freedom from incumbrances. 10. For further assurance. |
|---|--|

1. THIS INDENTURE, made the day of A.D. 185 , Parties.
BETWEEN (*vendor*), of, &c. of the one part, and (*purchaser*), of, &c.
of the other part.

2. WHEREAS by indenture dated on or about the 29th day of September, in the year 1821, and made between the said (*vendor*) of the one part, and (*lessee*) of the other part, the said (*vendor*), in consideration of the rents and covenants thereafter reserved and contained on the part of the said (*lessee*) to be observed and performed, demised unto the said (*lessee*) ALL (DESCRIBE *parcels as set out in lease*), TO HOLD the same with the appurtenances unto the said (*lessee*), his executors, administrators and assigns, from the 29th day of September last, for an absolute term of ninety-nine years, at the yearly rent of 50*l.*, by two equal half-yearly payments, on the 25th day of March and the 29th day of September.

Recital of lease whereby ground rents are reserved.

No. IX.

*Assignment
of Ground-rents
to a Purchaser,
with usual
Covenants for
Title.*

Of contract for
purchase.

Of agreement to
demise premises
out of which
rents are
issuing.

3. AND WHEREAS the said (*leseor*) hath agreed to sell the said ground-rent, or annual sum of 50*l.*, issuing out of the aforesaid premises, so reserved by the said hereinbefore recited indenture of lease as aforesaid, to the said (*purchaser*) for all the unexpired residue of the said term of ninety-nine years, from the 29th day of September next, for the sum of 550*l.*

4. AND WHEREAS, upon the treaty for the said purchase, and for the more effectually perfecting the same, it was further agreed that the said (*vendor*) should demise the said lands and premises out of which the said ground-rent is issuing unto the said (*purchaser*) for the term of sixty-nine years, commencing on the 29th day of September next, and one day more, which will be the residue of the said term of ninety-nine years, and one day over.

Testatum.

5. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said recited agreement, and in consideration of the sum of 550*l.* sterling, paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE, the said (*vendor*) DOTH by these presents grant, bargain, sell and demise unto the said (*purchaser*), his executors, administrators and assigns, all and singular the lands and premises mentioned and comprised in the said hereinbefore recited indenture of lease, with the rights, members, privileges and appurtenances thereunto belonging or in any wise appertaining.

Habendum.

6. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereinbefore mentioned and described, and hereby assigned, with their appurtenances (subject to the said hereinbefore recited indenture of lease, and to the term thereby granted) unto the said (*purchaser*), his executors, administrators and assigns, from the 29th day of September next, for the term of sixty-nine years, and one day more, from thenceforth next ensuing, being the residue now to come of the said term of ninety-nine years, and one day over.

Covenant from
vendor that

7. AND the said (*vendor*) doth hereby for himself, his heirs,

executors and administrators, covenant with the said (*purchaser*), his executors, administrators and assigns, that the said hereinbefore recited indenture of lease, and the rents and covenants therein respectively reserved and contained, on the part of the tenant to be paid and performed, are now valid and subsisting, and in nowise determined, released or extinguished.

No. IX.

*Assignment
of Ground-rents
to a Purchaser,
with usual
Covenants for
Title.*

lease is valid
and subsisting.

8. AND ALSO that he the said (*vendor*) now hath in himself good right, full power, and lawful and absolute authority, by these presents, to grant, demise and assign the said lands, ground-rent, and premises unto the said (*purchaser*), his executors, administrators and assigns, in manner aforesaid, according to the true intent and meaning of these presents.

That he has
good right to
grant, demise,
and assign
ground-rents.

9. AND ALSO that the same lands, ground-rent, and premises shall be held, received, taken and enjoyed accordingly, during the said term hereby granted, freely and clearly indemnified by the said (*vendor*), his heirs, executors or administrators, of and from all former and other estates, rights, titles, liens, charges, and incumbrances whatsoever, made or created by the said (*vendor*), or any of his ancestors or testators, or any other person or persons rightfully claiming under or in trust for him or them, or by or through his or their acts, deeds, defaults, privity or procurement.

For peaceable
enjoyment and
freedom from
incumbrances.

10. AND MOREOVER that the said (*vendor*), and all persons rightfully claiming any estate or interest in the said lands and premises hereby demised, shall and will from time to time, and at all times hereafter, at the request and costs of the said (*purchaser*), his executors, administrators or assigns, enter into, execute and perfect all such further assurances, for the more perfectly or satisfactorily assuring and confirming the said lands, ground-rent and premises unto the said (*purchaser*), his executors, administrators and assigns, for all the then residue of the said term of sixty-nine years and one day, hereby granted; as the said (*purchaser*), his executors, administrators, or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed.

For further
assurance.

IN WITNESS, &c.

No. X.

ASSIGNMENT OF BOND FOR SECURING A DEBT OF 1,000*l.* TO
A PURCHASER, WITH POWER OF ATTORNEY TO SUE, AND
USUAL QUALIFIED COVENANTS FROM VENDOR.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of bond. 3. That principal is still owing, and also an arrear of interest. 4. That assignor has agreed to sell the bond and debt thereby secured. 5. Testatum, by which the bond, and bond-debt are assigned to the purchaser. 6. Habendum. 7. Power of attorney. | <ol style="list-style-type: none"> 8. Qualified covenants from vendor that the bond is valid, and the moneys thereby secured still due. 9. That vendor has good right to assign. 10. That vendor will not receive bond-debt, or revoke power of attorney, or disavow or release any action, &c. 11. For further assurance. 12. Covenant from assignee to indemnify assignor from all costs in respect of actions, &c., prosecuted under power of attorney. |
|--|---|

Parties.

1. THIS INDENTURE, made the day of A. D. 185 ,
BETWEEN (*assignor, obligee of bond*) of the one part, and (*assignee*)
of the other part.

Recital of bond.

2. WHEREAS by a certain bond or obligation in writing, under the hand and seal of (*obligor*) dated the day of , the said (*obligor*) became bound to the said (*obligee*), in the penal sum of 2,000*l.*, with a condition thereunder written for making void the same, on payment by the said (*obligor*), his heirs, executors, or administrators, unto the said (*obligee*), his executors, administrators or assigns, of the sum of 1,000*l.*, and interest at the rate of 5*l.* for every 100*l.* by the year, at the time for that purpose therein mentioned, and since past.

3. AND WHEREAS the said principal sum of 1,000*l.* is still due and owing upon the said recited bond, together with an arrear of interest thereon from the day of amounting to the sum of £ , making altogether the sum of £ , which is still due to the said (*assignor*), upon his said recited security.

No. X.
Assignment of
Bond for
securing a debt
of 1,000*l.*
to a Purchaser,
&c.

4. AND WHEREAS the said (*assignor*) has agreed to sell his said bond debt, or sum of £ , to the said (*assignee*), for the sum of £ .

That principal
is still owing,
and also an
arrear of
interest.

That assignor
has agreed to
sell the bond
and debt there-
by secured.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the sum of 500*l.* sterling, paid by the said (*assignee*) to the said (*assignor*), on the execution hereof, the receipt of which the said (*assignor*) hereby acknowledges, and therefrom doth release, exonerate, and for ever discharge the said (*assignee*) his heirs, executors, administrators and assigns, HE the said (*assignor*) DOTH by these presents assign unto the said (*assignee*), his executors, administrators and assigns, ALL THAT the said hereinbefore recited bond or obligation, with the full force and benefit thereof, together with the said principal sum of 1,000*l.* thereby secured, and also the said sum of £ so now due and owing as arrears of interest in respect of the said principal sum of 1,000*l.*, and also all interest from henceforth to become due in respect of the same; and all the estate, right, title, and interest, both legal and equitable, of him the said (*assignor*) therein.

Testatum by
which the bond
and bond debt
are assigned by
the purchaser.

6. TO HAVE, HOLD, RECEIVE, TAKE, AND ENJOY the said bond or obligation, together with the said principal sum of 1,000*l.*, and all interest from henceforth to accrue due, in respect of the same, as also the said sum of £ , so due and owing as such arrear of interest as aforesaid, unto the said (*assignee*), his executors, administrators, and assigns, as and for his and their own proper moneys, goods and chattels, from henceforth, absolutely, and for ever.

Hatendum.

7. AND the said (*assignor*), doth by these presents absolutely and irrevocably appoint the said (*assignee*), his executors or administrators, the true and lawful attorney and attorneys of him

Power of
attorney.

No. X.
 Assignment of
 Bond for
 securing a debt
 of 1,000*l.*
 to a Purchaser,
&c.

the said (*assignor*), his executors or administrators, with full power and authority in the name or names of the said (*assignor*), his executors or administrators, but at the risk, costs, and charges, and for the sole benefit of the said (*assignee*), his executors, administrators or assigns, to sue upon the said bond, and to recover and receive the said moneys hereby assigned, and to give good and sufficient releases and discharges for the same; and also with full power and authority to appoint a substitute or substitutes for all, any, or either of the purposes aforesaid, and such substitution from time to time at pleasure to revoke; he the said (*assignor*) hereby ratifying, confirming, and promising and agreeing to ratify and confirm, all and whatsoever the said (*assignee*), his executors or administrators, or his or their substitute or substitutes, shall lawfully do or cause to be done in the premises by virtue of these presents.

Qualified
 covenants
 from vendor
 that the bond is
 valid, and
 moneys thereby
 secured still
 due.

8. AND the said (*assignor*), doth hereby for himself, his heirs, executors, and administrators, covenant with the said (*assignee*) his executors, administrators and assigns, that (notwithstanding any act or thing done or permitted by him the said (*assignor*), to the contrary), the said bond or obligation is a good, valid, and subsisting bond, and is still in full force and virtue; and also that the said principal sum of 1,000*l.*, and the sum of £ , as the interest thereupon is still due and owing from the said (*obligor*) to the said (*assignor*.)

That vendor
 has good right
 to assign.

9. AND ALSO that (notwithstanding any such act or thing as aforesaid) the said (*assignor*) now hath in himself good right to assign the said bond or obligation, and the said two several sums of 1,000*l.*, and £ , and all and singular other the premises hereby assigned unto the said (*assignee*), his executors, administrators and assigns in manner aforesaid, according to the true intent and meaning of these presents.

That vendor
 will not receive
 bond debt, or
 revoke power of
 attorney, or
 disavow or
 release an
 action, &c.

10. AND ALSO that he the said (*assignor*), will not receive the said principal sum of 1,000*l.*, or the said sum of £ so now due, as such arrears of interest thereon as aforesaid, or any future interest to accrue due in respect of the same, nor revoke, or attempt to revoke the power or authority hereinbefore given, nor release or compound the said debts or sums of money hereby

respectively assigned, or any part thereof, nor disavow, discontinue, release or discharge any action, suit, judgment, or execution that may be commenced or prosecuted by the said (*assignee*), his executors, administrators or assigns, in the name or names of the said (*assignor*), his executors or administrators, in pursuance of the powers and authorities hereinbefore contained, without the consent in writing of the said (*assignee*), his executors, administrators or assigns; but shall and will in all things ratify and confirm all such process or processes, or other proceedings as the said (*assignee*), his executors, administrators or assigns, shall institute and prosecute on account of the said hereby assigned bond or obligation, principal moneys and interest hereby assigned.

No. X.
 Assignment of
 Bond for
 securing a debt
 of 1,000*l.*
 to a Purchaser,
&c.

11. AND MOREOVER that the said (*assignor*), and all persons rightfully claiming under him, shall and will from time to time and at all times, at the request and costs of the said (*assignee*), his executors, administrators or assigns, enter into, execute and perfect all such further assurances, for the more perfectly or satisfactorily assuring and confirming the said bond or obligation, principal moneys and interest, and all and singular other the said hereby assigned premises, so and in such manner as that the same may become effectually vested in the said (*assignee*), his executors, administrators and assigns, according to the true intent and meaning of these presents, as the said (*assignee*), his executors, administrators or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed.

For further
 assurance.

12. AND the said (*assignee*), doth hereby for himself, his heirs, executors and administrators, covenant with the said (*assignor*), his executors, administrators and assigns, that he the said (*assignee*), his heirs, executors or administrators, shall and will from time to time, and at all times hereafter, well and sufficiently protect, save harmless, and keep indemnified, the said (*assignor*), his executors, and administrators, and his and their lands and tenements, goods and chattels, of and from all such costs and damages as he or they shall or may from time to time, or at any time, pay, sustain or become liable to, for or on account of any action or suit that may be commenced or prosecuted in the name or names of the said (*assignor*), his executors or administrators, in pursuance of

Covenant from
 assignee to
 indemnify
 assignor from all
 costs in respect
 of actions, &c.,
 prosecuted
 under power of
 attorney.

No. X.
—
*Assignment of
Bond for
securing a Debt
of 1,000l.
to a Purchaser,
&c.*
—

the powers and authorities hereinbefore contained, excepting such costs and damages only as shall be caused by or through the wilful neglect or default of him the said (*assignor*), his executors, administrators or assigns.

IN WITNESS, &c.

No. XI.

 ASSIGNMENT OF A SIMPLE CONTRACT DEBT; WITH POWER
 OF ATTORNEY TO SUE, AND USUAL COVENANTS.

- | | |
|-------------------------------------|---|
| 1. Parties. | 6. Qualified covenants from assignor that debt is still due. |
| 2. Recital of simple contract debt. | 7. That he has good right to assign. |
| 3. Of agreement to assign debt. | 8. That assignor will not do any act to hinder or prevent assignee from receiving debt. |
| 4. Testatum. | 9. For further assurance. |
| 5. Habendum. | |
-

1. THIS INDENTURE, made the day of A.D. 185 , Parties.
 BETWEEN (*assignor*) of, &c., of the one part, and (*assignee*) of, &c.
 of the other part.

2. WHEREAS (*debtor*), of &c., is indebted to the said (*assignor*) Recital of a simple contract debt.
 in the sum of 100*l*. for (STATE *subject-matter upon which debt arises.*)

3. AND WHEREAS the said (*assignor*) hath agreed to assign the Of agreement to assign debt.
 said debt of 100*l*. to the said (*assignee*) for the sum of £ .

4. NOW THIS INDENTURE WITNESSETH that in pursuance of Testatum.
 the said recited agreement, and in consideration of the sum of
 £ sterling, paid by the said (*assignee*) to the said (*assignor*),
 on the execution hereof, the receipt of which the said (*assignor*)
 hereby acknowledges, and therefrom doth release, exonerate and
 for ever discharge the said (*assignee*), his executors, administrators
 and assigns, HE the said (*assignor*) DOTH by these presents assign
 unto the said (*assignee*), his executors, administrators and assigns,
 ALL THAT the said debt or sum of 100*l*. so now due and owing unto

No. XI. him the said (*assignor*) by the said (*debtor*); AND all the estate, right, title and interest, both legal and equitable, of him the said (*assignor*) therein.

Assignment of a simple Contract Debt, with Power of Attorney to sue, and usual Covenants.

Habendum.

5. TO HAVE, HOLD, RECEIVE AND TAKE the said debt or sum of 100*l.* and all and singular other the premises hereby assigned unto the said (*assignee*), his executors, administrators and assigns, as and for his and their own proper moneys, chattels and effects, and to and for his and their own use and benefit, without any account or satisfaction to be hereafter rendered or given to the said (*assignor*), his executors, administrators or assigns. [INSERT power of attorney, as in last precedent, clause 7, p. 283.]

Qualified covenants from assignor that debt is still due.

6. AND the said (*assignor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*assignee*), his executors, administrators and assigns, that (notwithstanding any act or thing done or permitted by him the said (*assignor*) to the contrary) the said debt or sum of 100*l.* is still due and owing to him from the said (*assignee*.)

That he has good right to assign.

7. AND ALSO that, notwithstanding any such act or thing as aforesaid, he the said (*assignor*) now hath in himself good right to assign the said debt or sum of 100*l.* and premises unto the said (*assignee*), his executors, administrators and assigns, in manner aforesaid, according to the true intent and meaning of these presents.

That assignor will not do any act to hinder or prevent assignee from receiving debt.

8. AND ALSO that the said (*assignor*), his executors, administrators or assigns, shall not nor will at any time hereafter receive the said debt or sum of 100*l.*, or any part thereof, nor revoke the power of attorney hereinbefore given, or do any act whereby the said (*assignee*), his executors, administrators or assigns, may be prevented or hindered from enforcing the payment of the same.

For further assurance.

9. AND MOREOVER that the said (*assignor*), and all persons rightfully claiming any right or interest in the said debt, or sum of 100*l.*, and premises hereby assigned under or in trust for him, shall and will from time to time or at any time hereafter, at the request and costs of the said (*assignee*), his executors, administra-

tors or assigns, enter into, execute and perfect all such further acts and assurances, as well for the purpose of effectually or satisfactorily assigning the said debt or sum of 100*l.* unto the said (*assignee*), his executors, administrators and assigns, as also of assigning the same debt or sum of 100*l.* to any other person or persons whomsoever, or enabling the said (*assignee*), his executors, administrators or assigns, to recover and receive the same for his or their own proper use and benefit, as the said (*assignee*), his executors, administrators or assigns, or his or their counsel in the law shall require. [ADD covenant from assignee to indemnify assignor from all costs, in respect of actions, &c. prosecuted under power of attorney, &c., as in last precedent, clause 12, p. 285.]

No. XI.

Assignment of
a simple
Contract Debt,
with Power of
Attorney to sue,
as usual.

IN WITNESS, &c.

No. XII.

ASSIGNMENT BY WAY OF ABSOLUTE SALE FROM A MORTGAGEE TO A PURCHASER OF A MORTGAGE DEBT OF £1,000, AND OF THE SUM OF £75, BEING AN ARREAR OF INTEREST; AND ALSO OF THE MORTGAGED PREMISES, WHICH HAD BEEN DEMISED TO THE MORTGAGEE FOR A TERM OF 2,000 YEARS.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of mortgage by demise for securing 1,000<i>l.</i> 3. That principal is still due, and also an arrear of interest. 4. Of agreement to purchase. 5. Testatum, mortgagee assigns 1,000<i>l.</i> principal, and 75<i>l.</i> due for interest. 6. Habendum. 7. Power of attorney. | <ol style="list-style-type: none"> 8. Further testatum, mortgagee assigns demised premises. 9. Habendum to purchaser for residue of term. 10. Covenant from mortgagee that assigned debts are still due. 11. That he has good right to assign. 12. That he will not receive debts, nor do any act to hinder the recovery thereof. 13. For further assurance. |
|---|--|

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*mortgagee*) of, &c., the one part, and (*purchaser*) of,
&c., of the other part.

Recital of
mortgage by
demise, for
securing
1,000*l.*

2. WHEREAS (*mortgagor*) of, &c., is indebted to the said (*mortgagee*) in the sum of 1,000*l.* for moneys advanced by the said (*mortgagee*) to the said (*mortgagor*), on the security of the messuages and premises hereinafter described, and which, by indenture dated the day of in the year 18 , and made between the

said (*mortgagor*) of the one part, and the said (*mortgagee*) of the other part, were demised by the said (*mortgagor*) to the said (*mortgagee*), his executors, administrators and assigns, for the term of 2,000 years, subject to a proviso for avoiding the said term on payment by the said (*mortgagor*), his heirs, executors, administrators or assigns, unto the said (*mortgagee*), his executors, administrators or assigns, of the said sum of 1,000*l.* and interest, at the rate of 5*l.* for every 100*l.* by the year, at the time and in manner therein mentioned, but in payment whereof default was made.

No. XII.
Assignment
from Mortgagees
to Purchaser of
Mortgage Debt,
and of Arrear
of Interest; and
also of Mort-
gaged Premises
demised for a
Term of Years.

3. AND WHEREAS the said principal sum of 1,000*l.* is still due and owing from the said (*mortgagor*) to the said (*mortgagee*), together with a considerable arrear of interest, amounting altogether to the sum of 75*l.*

That principal
is still due, and
also an arrear of
interest.

4. AND WHEREAS the said (*mortgagee*) has contracted to sell the said two several debts or sums of 1,000*l.* and 75*l.* so due and owing to him as aforesaid, and all benefit, profit and advantage to be received thereon or derived therefrom, unto the said (*purchaser*), for the sum of 700*l.*

Of agreement
to purchase.

5. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of 700*l.* sterling paid by the said (*purchaser*) to the said (*mortgagee*) on the execution hereof, the receipt of which the said (*mortgagee*) hereby acknowledges, and therefrom doth acquit, release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; HE the said (*mortgagee*) DOTII by these presents grant, bargain, sell and assign unto the said (*purchaser*), his executors, administrators and assigns, ALL that the aforesaid mortgage debt of 1,000*l.*, and also all the aforesaid sum of 75*l.* so due as aforesaid for an arrear of interest thereon as aforesaid; and all other sum and sums of money that may be due and owing upon or by virtue of the said recited mortgage security; and all interest hereafter to grow due in respect of the said principal sum of 1,000*l.* (*a*) hereby assigned; and all benefit, profit and advantage to be received thereon, or derived therefrom; AND all the estate, right, title, and interest

Testatum,
mortgagee
assigns 1,000*l.*
principal, and
75*l.* due for
interest.

No. XII. benefit, claim and demand whatsoever, both at law and in equity, of him the said (*mortgagee*) therein.

Assignment
from Mortgagee
to Purchaser of
Mortgage Debt,
and of Arrear
of Interest; and
also of Mort-
gaged Premises
demised for a
Term of Years.

Habendum.

6. TO HAVE, HOLD, RECEIVE AND TAKE the said principal sum of 1,000*l.*, and also the said sum of 75*l.* so due as such arrear of interest as aforesaid, and all interest henceforth to accrue due on the said principal sum of 1,000*l.*, and all and singular other the premises hereby assigned, unto the said (*purchaser*), his executors, administrators and assigns, as and for his and their proper moneys, goods and chattels, absolutely and for ever, and to and for his and their own proper use and benefit, without any account or satisfaction to be hereafter rendered by the said (*mortgagee*), his executors, administrators or assigns, of or concerning the same.

Power of
attorney.

7. AND for better enabling the said (*purchaser*), his executors, administrators and assigns to recover and receive the said two several sums of 1,000*l.* and 75*l.* hereby assigned, and the interest henceforth to accrue due on the said sum of 1,000*l.*, HE the said (*mortgagee*) DOTH by these presents constitute and appoint the said (*purchaser*), his executors or administrators, the true and lawful attorney and attorneys irrevocable of him the said (*mortgagor*), his executors or administrators, and in his or their name or names, but for the benefit, and at the sole risk, costs and charges of the said (*purchaser*), his executors, administrators or assigns, to ask, demand, sue for, recover and receive of and from the said (*mortgagor*), his heirs, executors administrators or assigns, or other the person or persons to whom it shall or may belong to pay the same, the said two several principal sums of 1,000*l.* and 75*l.* secured by the said hereinbefore recited mortgage; and all interest hereafter to grow due on the said principal sum of 1,000*l.*: AND in case of nonpayment thereof, or of any part thereof, to use and employ all such lawful and equitable ways and means for enforcing

Interest cannot
be made to carry
interest by a
simple act of
assigning it as
a debt.

(a) A mortgagee cannot, by assigning any arrears of interest that may be owing to him, thereby render the mortgagor liable to future interest upon that sum; for a mortgagee cannot impose a greater liability upon the mortgagor by assigning the mortgage debt, than the latter would otherwise be liable to; and it is clearly established, that interest cannot be made payable upon interest, even where the mortgagor and mortgagee enter into an express agreement to that effect: (*Thornhill v. Evans*, 2 Atk. 330.)

the payment of the same as may be deemed expedient in that behalf; and upon payment or receipt thereof, to give good and sufficient releases and discharges for the same; and with full power for all, any, or either of the purposes aforesaid, to appoint a substitute or substitutes, and such substitution at pleasure to revoke; HE the said (*mortgagee*) hereby ratifying and confirming, and promising and agreeing to ratify and confirm, all and whatsoever the said (*purchaser*), his executors or administrators, or his or their attorney or attorneys, shall lawfully do or cause to be done in the premises by virtue of these presents.

No. XII.

Assignment
from Mortgagee
to Purchaser of
Mortgage Debt,
and of Arrear
of Interest; and
also of Mort-
gaged Premises
demised for a
Term of Years.

8. AND THIS INDENTURE FURTHER WITNESSETH, that by way of an additional and collateral security for assuring unto the said (*purchaser*), his executors, administrators and assigns, the payment of the said two several sums of 1,000*l.* and 75*l.* so assigned to him as aforesaid, HE the said (*mortgagee*) DOTH by these presents assign, ratify and confirm unto the said (*purchaser*), ALL [HERE DESCRIBE *parcels*]; AND all rights, members and appurtenances to the said premises belonging or appertaining; AND all the estate, right, title and interest, benefit, claim and demand whatsoever, both legal and equitable, of him the said (*mortgagee*) therein; TOGETHER with all deeds, evidences and writings relating to the title of the said messuages and premises, in the custody or possession of the said (*mortgagee*), or which he can procure without suit.

Further testa-
tum, mortgagee
assigns demised
premises.

9. TO HAVE AND TO HOLD the said messuages or dwelling-houses, gardens, and all and singular other the premises hereinbefore described and hereby assigned, with their appurtenances, unto the said (*purchaser*), his executors, administrators and assigns, from henceforth for all the rest, residue and remainder of the said term of 2,000 years, and for all other the estate, term and interest of him the said (*mortgagee*) therein, to and for his and their own absolute use and benefit; but *subject nevertheless* to such right or equity of redemption (if any) as the said (*mortgagor*), his heirs or assigns, may be entitled to in the said premises.

Habendum to
purchaser for
residue of term.

10. AND the said (*mortgagee*) doth hereby for himself, his executors and administrators, covenant with the said (*purchaser*),

No. XII. his executors, administrators and assigns, that (notwithstanding any act done or permitted by him the said (*mortgagor*) to the contrary) the said two several debts of 1,000*l.* and 75*l.* are still due and owing from the said (*mortgagor*) to the said (*mortgagee*.)

Assignment from Mortgagee to Purchaser of Mortgage Debt, and of Arrear of Interest; and also of Mortgaged Premises demised for a Term of Years.

Covenant from mortgagee that assigned debts are still due.

That he has good right to assign.

11. AND ALSO that (notwithstanding any such act as aforesaid) the said (*mortgagee*) now hath in himself full power and lawful authority to assign the said two several debts of 1,000*l.* and 75*l.* unto the said (*purchaser*), his executors, administrators and assigns, to and for his and their absolute use and benefit in manner aforesaid, according to the true intent and meaning of these presents.

That he will not receive debts, nor do any act to hinder the recovery thereof.

12. AND ALSO that he the said (*mortgagee*), his executors or administrators, shall not nor will at any time hereafter receive the said two several debts or sums of 1,000*l.* and 75*l.*, or either of them, or any part of the same; nor make, do, suffer or execute, or knowingly occasion any act, deed, matter or thing whatsoever, whereby or by reason or means whereof the said (*purchaser*), his executors, administrators or assigns, may be prevented or hindered from recovering, enforcing and receiving payment of the said two several debts or sums of 1,000*l.* and 500*l.*, or either of them, or any part of the same.

For further assurance.

13. AND FURTHER that the said (*mortgagee*), his executors or administrators, shall and will from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his executors, administrators or assigns, enter into, execute and perfect all such further acts, deeds, matters and things whatsoever for the more perfectly or satisfactorily assigning the said two several debts or sums of 1,000*l.* and 75*l.*; and also for assigning the same to any other person or persons whomsoever, and enabling the said (*purchaser*), his executors, administrators or assigns, to recover and receive the same, to and for his and their own use and benefit; as also for the more perfectly or satisfactorily assigning, assuring and confirming the said messuages or dwelling-houses, gardens and premises hereby assigned, with the appurtenances, unto the said (*purchaser*), his executors, administrators and assigns, for all the

then residue of the said term of 2,000 years, as the said (purchaser), his executors, administrators or assigns, or his or their counsel in the law, shall require. [INSERT covenant from mortgagee that he has done no act to incumber, *ut ante*, Part I., No. XVII., clause 7, p. 107; AND THEN ADD COVENANT from purchaser to indemnify mortgagee against the costs of all actions brought in his name, *ut ante*, No. X., clause 12, p. 285.]

No. XII.
 Assignment
 from Mortgages
 to Purchaser of
 Mortgage Debt,
 and of Arrear
 of Interest; and
 also of Mort-
 gaged Premises
 demised for a
 Term of Years.

IN WITNESS, &c.

No. XIII.

 ASSIGNMENT BY A PATENTEE AND HIS PARTNER OF THEIR
 INTEREST IN A PATENT.

- | | |
|--|--|
| 1. Parties.
2. Recital of partnership deed between
patentee and his partner.
3. That patentee and his partner have
carried on patent for seven years,
and derived a considerable profit
therefrom.
4. Of contract for sale of patent right. | 5. Testatum.
6. Habendum.
7. Covenant from vendors that patent
is valid and subsisting.
8. That vendors have good right to
assign.
9. For quiet enjoyment.
10. For further assurance. |
|--|--|
-

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 ,
 BETWEEN (*patentee*) of, &c., and (*patentee's partner*) of, &c. of the
 one part, and (*purchaser*) of, &c. of the other part.

Recital of part-
 nership deed
 between patentee
 and his partner.

2. WHEREAS by indenture dated the day of , in the
 year 18 , made between the said (*patentee*) of the one part, and
 the said (*partner*) of the other part, AFTER RECITING that the said
 (*patentee*) being the inventor of (STATE *subject-matter of patent*),
 had obtained letters patent dated the day of for working
 his said patent, either by himself, or such other persons as he
 should at any time agree with in that part of Great Britain and
 Ireland called England, for the term of fourteen years, to be
 computed from the day of the date of the said letters patent;
 AND ALSO RECITING that the said (*patentee*) had associated himself
 with the said (*partner*) in the business of manufacturing and
 vending the said (*patent articles*), and that the said (*partner*) had
 defrayed the expenses incurred in obtaining the said letters patent;
 IT IS WITNESSED, that in consideration of the mutual trust and
 confidence which the said (*patentee*) and (*partner*) reposed in each

other, each of them did thereby covenant and agree with the other of them to become partners in the business of manufacturing and vending the said (*patent articles*) for the term of fourteen years from thenceforth next ensuing, under the style and firm of (*patentee's surname and partner's surname*) and Co., at (*name of place of business*), or at such other place or places as they should mutually agree upon, under the terms and conditions in the now reciting indenture expressed and contained.

No. XIII.

Assignment by
a Patentee and
his Partner of
their Interest
in a Patent.

3. AND WHEREAS the said (*patentee*) and (*partner*) have carried on the manufactory of the said (*patent articles*) for the last seven years, and have derived considerable profit therefrom, and the same has now become a very lucrative concern.

That patentee
and his partner
have carried on
patent for seven
years, and
derived a con-
siderable profit
therefrom.

4. AND WHEREAS the said (*patentee*) and (*partner*) have contracted to sell their interest in the said patent, and in the manufacture of the said (*patent articles*) to the said (*purchaser*), for the residue of the said term of fourteen years, for the sum of £ .

Of contract for
sale of patent
right.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of £ sterling, this day paid by the said (*purchaser*) to the said (*patentee*) and (*partner*), the receipt of which they the said (*patentee*) and (*partner*) do hereby acknowledge, and therefrom do release, exonerate, and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, THEY the said (*patentee*) and (*partner*) DO and each of them BOTH by these presents grant, bargain, sell, assign, transfer and set over, ratify and confirm unto the said (*purchaser*), his executors, administrators, and assigns, ALL those the aforesaid letters patent, and patent right, under the Great Seal of Great Britain, dated the day of , whereby the sole exclusive licence, privilege and authority is granted to the said (*patentee*), either by himself or by deputy or deputies, servants or agents, or such other person or persons as he shall at any time agree with, and no others, to use, exercise and vend his said invention in that part of Her Majesty's United Kingdom of Great Britain and Ireland called England, from the day of the date of the said letters patent, for the term of fourteen years thenceforth next ensuing; AND all rights, liberties, privileges, profits, emolu-

Testatum.

No. XIII. ments, and advantages thereunto belonging; AND all the estate, right, title, interest, term of years to come and unexpired, property, claim and demand whatsoever, both legal and equitable, of them the said (*patentee*) and (*partner*) therein.

*Assignment by
a Patentee and
his Partner of
their Interest
in a Patent.*

Habendum.

6. TO HAVE, HOLD, USE, EXERCISE AND ENJOY the said patent, patent right, licence, privilege, authority, and all and singular other the premises hereby granted and assigned, unto the said (*purchaser*), his executors, administrators and assigns, from henceforth during all the unexpired residue of the said term of fourteen years, in and by the said letters patent granted, and for all other the estate, term and interest of them or either of them the said (*patentee*) and (*partner*) therein; and for all such other new or extended term or terms as may hereafter be obtained thereof.

Covenant from
vendors that
patent is valid
and subsisting.

7. AND the said (*patentee*) and (*partner*) for themselves, their heirs, executors and administrators, DO HEREBY jointly and severally covenant with the said (*purchaser*), his executors, administrators and assigns, that (notwithstanding any act or thing done or permitted by them or either of them to the contrary), the said letters patent hereinbefore mentioned to have been granted to the said (*patentee*), and which are expressed to be hereby assigned to the said (*purchaser*), are now good, valid and subsisting at law, and not forfeited, or become void or voidable.

That vendors
have good
right to assign.

8. AND ALSO that (notwithstanding any such act or thing as aforesaid) they the said (*patentee*) and (*partner*), or one of them, now have or hath in themselves or himself, good right and lawful and absolute authority to assign the said letters patent, patent right, and other the premises hereby assigned, unto the said (*purchaser*), his executors, administrators and assigns, for all the unexpired residue of the said term of fourteen years in manner aforesaid, according to the true intent and meaning of these presents.

For quiet
enjoyment.

9. AND FURTHER, that all and singular the said patent, patent right, and all and singular other the said hereby assigned premises, shall or may at all times during the residue of the said term of fourteen years, be peaceably and quietly held and enjoyed by the

said (*purchaser*), his executors, administrators or assigns, without let, suit, interruption or denial, of or by the said (*patentee*) and (*partner*), or either of them, or any other person or persons whomsoever, rightfully claiming under them, or either of them, or by or through their or either of their acts, deeds, defaults, privity or procurement.

No. XIII.

—
*Assignment by
a Patentee and
his Partner of
their Interest
in a Patent.*
—

10. AND MOREOVER that the said (*patentee*) and (*partner*), and all persons whomsoever rightfully claiming under them, or either of them, shall and will from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his executors, administrators or assigns, enter into, execute and perfect all such further assurances, for the more perfectly or satisfactorily assigning, assuring and confirming the said patent, patent right, and all and singular other the said hereby assigned premises, unto the said (*purchaser*), his executors, administrators and assigns, for all the then unexpired residue of the said term of fourteen years, according to the true intent and meaning of these presents, as the said (*purchaser*), his executors, administrators or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed.

For further
assurance.

IN WITNESS, &c.

SECTION III.

COPYHOLD ASSURANCES.

NO. I.—COVENANT TO SURRENDER COPYHOLDS TO A PURCHASER IN FEE, WITH USUAL COVENANTS FOR TITLE.

NO. II.—DEED TO ACCOMPANY A PREVIOUS SURRENDER OF COPYHOLDS.

NO. III.—CONVEYANCE OF COPYHOLDS OF INHERITANCE BY A MORTGAGOR AND MORTGAGEE TO A PURCHASER IN FEE.

NO. IV.—COVENANT TO SURRENDER COPYHOLDS FOR LIVES.

NO. V.—CONVEYANCE OF THE COPYHOLD ESTATE OF A BANKRUPT BY THE COMMISSIONER AND ASSIGNEES UNDER A PETITION IN BANKRUPTCY TO BE ENTERED ON THE COURT ROLLS. VARIATION WHERE THE BANKRUPT IS TENANT IN TAIL IN POSSESSION.

No. I.

COVENANT TO SURRENDER COPYHOLDS TO A PURCHASER IN
FEE, WITH USUAL COVENANTS FOR TITLE. (a)

- | | |
|---|--|
| 1. Parties. | and in the meantime to hold in trust for him. |
| 2. Recital of admittance of vendor to copyholds. | 5. That vendor has good right to surrender. |
| 3. Of agreement so sell. | 6. For quiet enjoyment, and freedom from incumbrances, &c. |
| 4. Testatum, by which vendor covenants to surrender to purchaser, | 7. For further assurance. |

1. THIS INDENTURE, made the day of A. D. 185 , Parties,
BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*) of,
&c., of the other part.

2. WHEREAS at a court baron holden for the manor of A., in the said county of B., on the day of the said (*vendor*) was admitted tenant of the copyhold hereditaments and premises hereinafter described, *to hold* the same, with the appurtenances, unto the said (*vendor*), his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor, subject to the rents, duties, suits and services therefore due and of right accustomed.

3. AND WHEREAS the said (*vendor*) hath agreed to sell the said copyhold hereditaments and premises, and the fee simple and inheritance thereof, according to the custom of the said manor, unto the said (*purchaser*) for the sum of 1,500*l*.

(a) The above deed of covenant must be impressed with a 1*l*. 15*s*. stamp, and the *ad valorem* stamp affixed to the surrender or memorandum thereof, if made out of court, or the copy of court roll of the surrender if made in court: (Stat. 55 Geo. 3, c. 185.)

No. I.

Covenant to
surrender Copy-
holds to a
Purchaser in Fee
with usual
Covenants for
Title.

Testatum, by
which vendor
covenants to
surrender to
purchaser, and
in the mean-
time to hold in
trust for him.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of 1,500*l*. sterling this day paid by the (*purchaser*) to the said (*vendor*), the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth by these presents release the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*) DOTH hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that he the said (*vendor*), or his heirs, will, at or before the next general or other court to be holden in and for the said manor of A., in the said county of B., well and effectually surrender (*b*) into the hands of the lord or lady for the time being of the said manor, by the acceptance of the steward, or by the hands of two or more customary tenants of the said manor or manors, according to the custom or respective customs thereof, or otherwise well and effectually convey and assure to the use and behoof of the said (*purchaser*), his heirs and assigns, ALL that copyhold or customary messuage or tenement, lands and hereditaments, situate within and being parcel of the said manor of B., and to which the said (*vendor*) was so admitted tenant as aforesaid, and which said messuage and tenement and premises are described in the said surrender as ALL, &c. [HERE INSERT *particular description*], AND ALL rights, members and appurtenances to the said copyhold hereditaments belonging or appertaining: TO THE INTENT that the said (*purchaser*), his heirs or assigns, may be admitted tenant of the same copyhold hereditaments and premises on the court rolls of the said manor; TO HOLD to him, his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor,(c)

Copyholds not
within Statute
of Uses.

(b) A surrender will pass no greater estate than the copyholder himself takes in the premises. Hence if A., a copyholder for life, surrender to B. in fee, it will give B. an estate *pur autre vie* only, determinable on A.'s decease (Co. Cop. s. 34; Gilb. Ten. 257); Wat. Cop. 98); for a surrender will pass no more than what a surrenderor making it may lawfully pass, and is not permitted to operate tortiously; consequently, a surrender by a husband will be no discontinuance of his wife's lands: (4 Leon. 88, ca. 186; 4 Co. 23, a; and see *Oldcott v. Lovell*, Moore, 753; *Knight v. Fotman*, 1 Leon. 95; Gilb. Ten. 189; *Shaw v. Thompson*, Cro. Eliz. 361.)

Uses to bar
dower unneces-
sary in copyhold
assurances.

(c) Copyholds not being within the Statute of Uses, that statute cannot execute the use in the surrenderee, so that until admittance the estate remains in the surrenderor; still, upon admittance the surrenderee will become clothed with the legal estate, in the same manner as it would have vested in *cestui que use* in

SUBJECT to the rents, duties, suits and services therefore due and of right accustomed. AND FURTHER, that in the meantime and until such surrender shall be made and perfected, and the said (purchaser) or his heirs shall be admitted tenant to the said copyhold hereditaments and premises, the said (vndor) and his heirs shall and will stand and be seised or possessed thereof, *In trust* and for the sole use and benefit of the said (purchaser), his heirs and assigns for ever, and to be surrendered and disposed of from time to time as he or they shall direct or appoint; PROVIDED ALWAYS, that the said (vndor), his heirs, executors and administrators may, during the continuance of this trust, deduct out of the rents and profits of the said copyhold hereditaments and premises, all such incidental expenses as he or they may in such meantime incur in respect of the same premises. (d)

No. 1.

Covenant to
surrender Copy-
holds to a
Purchaser in fee
with usual
Covenants for
Title.

freeholds under the statute, and will relate back to the time of surrender, and operate from its date: (*Benson v. Scott*, 1 Salk. 185; S. C., Carth. 279; 3 Lev. 385; *Payne v. Barker*, Orl. Bridg. 34; *Vaughan d. Atkins v. Atkins*, 5 Bur. 2785; *Gruntham v. Copley*, 2 Saund. 422; *Holdfast d. Woollams v. Clapham*, 1 T. R. 600; *Doe d. Bennington v. Hall*, 16 East, 208.)

A widow of a copyholder is not dowable except by custom, and the interest she thus takes is styled her freebench; but she does not acquire this right by her marriage, and only becomes entitled to it in the event of her husband dying seised; for this reason, therefore, there has never been any necessity for adopting any mode of limitations to bar this dowable right; it being in the power of the husband to defeat it altogether by any disposition in his lifetime, and any act of his for a valuable consideration will have the same operation as a legal surrender: (*Hinton v. Hinton*, 2 Ves. sen. 631; S. C., Anbl. 454; *Brown v. Raindle*, 3 Ves. 356; see also *Brown's case*, 4 Co. 22; *Benson v. Scott*, 4 Mod. 251; 12 *ib.* 49; S. C., Carth. 275; *Walter v. Bartlett*, 2 Roll. Rep. 179; *Howard v. Bartlett*, Hob. 181; *Waldoe v. Bartlett*, Cro. Jac. 573; *Parker v. Blecke*, Cro. Car. 568; *Sutton v. Stone*, 2 Atk. 101; *Goodwyn v. Winsmore*, *ib.* 526; 2 Hughes Pract. Sales, 100.)

(d) As soon as the surrender is complete, the purchaser should make a presentment of such surrender, which if it be taken out of court, should, according to the customs of most manors, be made at the next court day (Co. Cop. s. 3; Tr. 88; Co. Litt. s. 79; Gilb. Ten. 220, 280; Scriv. Cop. 277; *Burgaine v. Sparling*, Cro. Car. 273, 283; *Burton v. Lloyd*, 3 P. Wms. 285, n. a; *Fawcett v. Louther*, 2 Ves. 300; *Moore v. Moore*, *ib.* 596; *Mitchel v. Neale*, *ib.* 679); though by special custom it may be made at a subsequent one: (*Moore v. Moore*, 2 Ves. 602.) In *Horlock v. Priestly* (2 Sim. 77), indeed, the Vice-Chancellor expressed an opinion that even in the absence of any special custom, a surrenderee has an inchoate legal title capable of being made complete whenever it may suit his convenience to have the surrender presented. The correctness of this dictum has, however, been questioned, and in a case decided about the same time in the King's Bench, in which a question of this kind was mooted (*Doe v. Cul-laway*, 6 B. & C. 492; S. C., 9 Dow. & Ry. 518), Lord Tenterden, although he said it was not necessary in the case before him to give an opinion whether such a custom was good in point of law, yet he must say he should have great difficulty in holding that it was so. And even where such a custom can be supported, no time ought to be lost in getting such a presentment made; for if a subsequent surrenderee should make a prior presentment, he would exclude

Presentment
of surrender
should be made
as soon as the
latter is
complete.

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Covenant to
surrender Copy-
holds to a
Purchaser in Fee
with usual
Covenants for
Title.

5. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, further covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act or thing done or permitted by him the said (*vendor*) to the contrary) he the said (*vendor*) now hath in himself good right to surrender

That vendor
has good right
to surrender.

the former surrenderee, even though both presentments should be made at the same court: (*Burgaine v. Spurling*, Cró. Car. 273; S. C., Sir W. Jones, 306.) It is also essential that the presentment should correspond in all material points with the surrender, as any variance between them might be fatal: (Scriv. Cop. 279; Wat. Cop. 88.) It must also be ascertained that the presentments have been duly made and entered on the rolls. This is a matter of the utmost importance, for though some contend that presentment is only for the information of the lord to apprise him that a surrender has been made, and therefore that it is not essential when the lord has obtained that information *aliunde*, there are others who argue just as strongly that a presentment is in every instance of as much importance as a surrender or admittance; that it is an integral part of the copyhold assurance, the tenant holding by copy of court roll, and the presentment being an essential part of that roll; and in short, that the want of a true presentment will be a fatal defect in the surrender and admittance: (See Mr. Coventry's note to Wat. Cop. 80; Scriv. Cop. 279, *et seq.*) If, however, the presentment be truly made and accord with the surrender, and yet be wrongly entered on the rolls, the roll may be amended. As, for example, if a surrender be made upon condition, and so presented, and the steward in presenting it omit the condition, enrolling it as an absolute one, yet upon sufficient proof made in court, the surrender shall not be avoided, but the roll being no estoppel nor record (*Burgesse and Foster's case*, 1 Leon. 289; 4 *ib.* 215) shall be amended; and this shall be no conclusion to the party to plead or give in evidence the truth of the matters: (*Winter v. Jerningham*, Dy. 251, *b*; Gilb. Ten. 192; Co. Cop. s. 40.) And though the admission was absolute, yet the surrenderee shall be subject to the condition; for when admitted he shall be in by the surrenderor, and the lord cannot vary his estate: (Wat. Cop. 90; 2 Hughes Pract. Sales, 115, 116.)

Evidence of
surrender and
presentment.

The court rolls afford the best evidence of the surrender and presentment, but they are not the only evidence, as these may be proved by draughts of an entry produced from the muniments of a manor, and the testimony of the foremen of the homage who made such presentment: (*Doe d. Priestly v. Callaway*, 6 B. & C. 848.) Nor is an entry on the rolls in all cases conclusive on the parties, as a mistake in an entry may be shown by an averment in pleading, or by evidence before a jury: (*Burgesse and Foster's case*, 1 Leon. 289; S. C., 4 *ib.* 214; *Kite v. Quenton*, 4 Co. 25; 2 Hughes Pract. Sales, 19.)

Admission.

Admission is said by some to be the formal, and the surrender the substantial part of the copyhold assurance: (*Benson v. Scott*, 4 Mod. 251; S. C., Salk. 185; Carth. 275; Skin. 406; Scriv. Cop. 349.) By others it is said to be the life and perfection of the copyholder's estate, and to be to the surrender what livery of seisin is to the feoffment, which is more of essence than of form. It is, however, agreed on all sides that admission confers no right, but merely gives the party having a title to the possession the means of obtaining it: (See Mr. Coventry's note to Wat. Cop. 230.) Still the admission has reference to the surrender, so as to defeat all mesne acts as well of the surrenderor as of the lord of the manor (*Benson v. Scott*, *sup.*; *Grantley v. Copley*, 2 Saund. 422; *Holdfast d. Woollams v. Clapham*, 1 T. R. 600; *Doe d. Bennington v. Hall*, 16 East, 208); but until admission, the surrenderee is a mere stranger, and as such, wholly incapable of surrendering to a third party: (*Payne v. Baker*, Orl. Bridg. 33.) But where a surrenderee dies before admittance, though he has in a strict legal sense no right to the tenement, he has still a *scintilla juris* in a larger sense, to compel the lord to admit him, and this right on his decease will devolve upon his heir. (*ib.*)

the said copyhold hereditaments and premises, with their appurtenances, to the use of the said (*purchaser*), his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents.

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Covenant to
surrender Copy-
holds to a
Purchaser in Fee
with usual
Covenants for
Title.

6. AND ALSO that (notwithstanding any such act or thing as aforesaid) the same hereditaments and premises shall or may be peaceably and quietly held and enjoyed accordingly, without let, suit, eviction, interruption or denial of or by the said (*vendor*) or any other person or persons rightfully claiming or to claim through or under him, freely, clearly, and absolutely exonerated by the said (*vendor*), his heirs, executors or administrators, and by him or them fully indemnified, from all former surrenders, forfeitures, cause and causes of forfeiture, estates, rights, titles, liens, charges and incumbrances whatsoever, made or created by the said (*vendor*) or any other person or persons whomsoever rightfully claiming through or under him, or through his acts, deeds, defaults, privity or procurement (save and excepting always the rents, duties, suits and services to be paid, done and performed to the lord of the said manor of B., for or in respect of the said copyhold hereditaments and premises, and of right accustomed to be paid and performed.)

For quiet
enjoyment and
freedom from
incumbrances.

7. AND MOREOVER that the said (*vendor*) and all persons rightfully claiming any estate or interest, legal or equitable, in the said copyhold hereditaments and premises through or under him, shall and will from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his heirs or assigns, enter into and execute all such further acts, deeds, conveyances, surrenders and assurances for the more perfectly or satisfactorily surrendering, assuring and confirming the said copyhold hereditaments and premises with their appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns, at the will of the lord, according to the custom of the said manor and the true intent and meaning of these presents, as the said (*purchaser*), his heirs or assigns, or his or their counsel in the law shall require, and as shall be tendered to be done and executed.

For further
assurance.

IN WITNESS, &c.

STAMP DUTIES UPON SURRENDERS AND ADMITTANCES TO COPYHOLD ESTATES.

*Practical
Observations
upon the Stamp
Laws.*

As to stamp
duties upon
surrenders of
copyholds.

Stamp duties upon the surrender of copyholds were first established by the stat. 10 Anne, c. 19, which also inflicted penalties and forfeitures upon stewards and other persons, for writing instruments without stamps : (sect. 100, 105.) These duties were continued and enlarged by subsequent statutes, all of which were repealed by the statute 48 Geo. 3, c. 149, and others granted in lieu thereof, which were also repealed by the General Stamp Act (55 Geo. 3, c. 184.) But, although the duties imposed by the act of 48 Geo. 3 were repealed by the General Stamp Act, the regulations instituted by the former act with respect to the surrender of copyholds were left untouched by it, and still remain in force. By these regulations, where any copyhold lands are proposed to be surrendered in court, the person proposing to surrender the same shall deliver a note in writing to the steward, stating whether the supposed surrender is upon a sale or otherwise, and in the former case, specifying the amount of the purchase moneys, to the intent that the same may be set out in words at length upon the copy of court-roll ; and until such note or writing shall be delivered, the lord or steward shall not accept the proposed surrender on pain of forfeiting 50*l.* ; and also imposing a penalty of 50*l.* upon the steward in case he should fail to set out the purchase money at full length upon the court-rolls ; and also subjecting the parties to a penalty of 100*l.*, who, upon a sale of copyhold premises shall, upon his note to be delivered as aforesaid, state the proposed surrender to be not upon a sale : (sect. 30.)

Lord and
stewards of
copyholds liable
to penalties for
enrolling surren-
ders unless duly
stamped.

The lord or steward is also made liable to a penalty of 50*l.* for enrolling surrenders made out of court, or bargains and sales, unless duly stamped (sect. 31) ; as also for taking any surrender, or admitting any person tenant to any copyhold premises out of court, or making any voluntary grant of such lands out of court, or granting any licence to demise any such lands, without causing the same, or some memorandum thereof, respectively to be put in writing on vellum, parchment, or paper duly stamped with the proper duty : (sect. 32.) Stewards of manors are also subjected to the like penalties for neglecting to make out and deliver copies of court-roll within four calendar months to the parties entitled thereto : (sect. 38.)

Surrenders of
copyholds.

Surrenders and other instruments relating only to copyhold or customary estates whose clear yearly value should not exceed 20*s.*, were exempted out of the preceding duties thereby imposed upon the sale of lands by the General Stamp Act (55 Geo. 3, c. 184), but were thereafter otherwise charged, viz. : a duty of 1*l.* was charged upon every surrender or admission, whether made in or out of court, where the yearly value exceeded the sum of 20*s.*, and where it did not exceed that sum, a duty of 5*s.*, with a progressive duty to the same amount, respectively, where the instrument contained thirty common law folios, or upwards.

Voluntary
grants.

Voluntary grants also made by the lord or lady of any manor of any copyhold or customary lands or hereditaments for a life or lives for a pecuniary consideration, and the copies of court-roll of such grants were also within the exemptions from the duties on conveyances under the General Stamp Act (55 Geo. 3, c. 184), but, under the head of "Copyhold," any

such voluntary grant, the schedule annexed to such last-mentioned act, or the memorandum thereof, whether made in or out of court, and with or without admittance thereon, where the yearly value did not exceed 20s., was charged with a duty of twice 1*l.*, and where it did not exceed 5s. with a duty of twice 5s., with a progressive duty of 1*l.* in either case. But now, under the new Stamp Act, schedule "COPYHOLD ESTATES and Customary Estates passing by surrender and admittance, or by admittance only, and not by deed: INSTRUMENTS relating thereto upon the sale or mortgage of any such estates; (that is to say,)

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Laws.*

"Any admittance out of court, or the memorandum thereof, or the copy of court-roll of any admittance in court, a duty of 2s. 6*d.*;" where the sum does not amount to thirty common law folios, with a progressive duty of the same amount where it exceeds the thirty common law folios.

Admittance to copyholds, duties chargeable upon.

Copyhold estates passing by surrender and admittance, or by admittance only, and not by deed, INSTRUMENTS relating thereto, not otherwise charged as above, nor under the head "Mortgage," or of conveyance upon the sale of lands, viz. any surrender made out of court, or the memorandum thereof, where the yearly value shall exceed 20s., are still chargeable under the General Stamp Act (55 Geo. 3, c. 184), with a duty of 1*l.*, and where the same shall not exceed 20s., with a duty of 5s.

Copyhold estates passing by surrender and admittance and not by deed.

Under the General Stamp Act also (55 Geo. 3, c. 184), any admittance out of court, or the memorandum thereof, where the clear yearly value shall exceed 20s. a duty of 1*l.*, and where the same shall not exceed 20s., 5s.

Old duties of admittances out of court.

And where both a surrender and admittance, or more than one surrender or admittance, or the memorandum thereof, shall be contained in the same piece of vellum, parchment, or paper, whether upon a sale, mortgage, or other occasion, the proper duty shall be paid in respect of each surrender and each admittance.

Where both surrender and admittance, or more than one surrender or admittance, are contained in the same piece of vellum, &c.

With respect to copyholds, therefore, the only alteration which the new Stamp Act has effected in the stamp duties, is in those relating to "Admittances out of court," and on the copy of court-roll of an admittance in court *upon sale or mortgage*, which is reduced from 1*l.* or 5s., as the case may be, to a duty of 2s. 6*d.* in all cases.

New duties of admittances out of court, or of an admittance in court.

With respect to surrenders made of several copyhold tenements, it seems that if they are described as forming the subject of one surrender only, or only one admittance, that in such case one stamp will be sufficient to cover the whole, provided one admittance only is necessary to perfect the title. But where several admittances are necessary, then a separate stamp will be required on each admittance. Thus, in the case of *Reg. v. Steward of Eton College* (6 L. T. Rep. 369), five several tenants in common of copyhold property contracted to sell the entirety to a purchaser for 1,022*l.*, and they joined in one surrender out of court. At a court subsequently held, the purchaser attended to be admitted, but the steward refused to admit him, except upon payment of five separate fines, fees, and stamp duties respectively. The Court of Queen's Bench, upon cause being shown against a rule for a *mandamus*, held, that several stamps were necessary; and Lord Denman, C. J., observed, that the distinction suggested as to this being a separate estate as between the parties, but not as to the others, is without any authority; and as the interest of each has not vested in the surrenderee until after surrender and admittance there must be a separate stamp for each. Mr. Justice Coleridge also said, "the admittance here will enure according to the estate, and as there are

As to surrenders of several tenements.

*Practical
Observations
upon the Stamp
Laws.*

Surrenders to
the use of will
exempt from
all stamp duty.

several estates, therefore, without several admissions, the surrender will not be complete ; several stamps are therefore necessary.

Original surrenders of copyholds out of court, and copies of court-rolls of surrenders in court, to the uses of a will, or to trustees, for the purposes of a will, as also the court-rolls, or the books of any manor wherein the proceedings relating thereto shall be entered or minuted, are exempted from all stamp duty whatever by the General Stamp Act (55 Geo. 3, c. 184), schedule "Copyhold." But under the late Wills Act (1 Vict. c. 26, s. 4), where copyholds have not been surrendered to the use of a will, no person claiming under the will shall be entitled to be admitted tenant thereto, without paying the same duties as the testator himself had been admitted ; and a proviso in a subsequent part of the same section, which empowers an unadmitted devisee of copyholds to devise his estates, which he could not have previously done, also enacts that no person claiming under such will shall be entitled to be admitted thereto except upon payment of such stamp duties, fees, fines, and sums of money as would have been lawfully due in respect of the admittance of the said testator, and of surrendering the estate to the use of his will, or of presenting, registering, or enrolling such surrender, had he been duly admitted, and had surrendered the same to the uses of his will ; all which said duties shall be paid in addition to the stamp duties, &c. due or payable, on the admittance of the persons entitled as aforesaid.

As to deeds of
covenant to
surrender
copyholds.

No express mention is made of deeds of covenant for the surrender of copyholds, either in the General Stamp Act (55 Geo. 3, c. 184), or in any other enactment relating to stamp duties, but such assurances are charged with a duty of 1*l.* 15*s.* under the head of "CONVEYANCE not otherwise charged."

Licence to
demise.

Licences to demise copyholds not mentioned in the recent Stamp Act (13 & 14 Vict. c. 97), are still chargeable under the General Stamp Act (55 Geo. 3, c. 184), by which every licence to demise or memorandum thereof, if granted out of court, and the copy of court-roll of any licence to demise, if granted in court, where the yearly value shall exceed 20*s.* is charged with a duty of 1*l.*, and where the same shall not exceed 20*s.* a duty of 5*s.*

No. 11.

DEED TO ACCOMPANY A PREVIOUS SURRENDER OF
COPYHOLDS.

- | | |
|--|---|
| 1. Parties. | 3. That vendor should enter into covenants for title. |
| 2. Recital of contract to purchase, and of surrender to purchaser's use and his admission thereon. | 4. Covenants by vendor for title, &c. |

1. THIS INDENTURE, made the day of , A.D. 185 , Parties.
BETWEEN (*vendor*) of &c., of the one part, and (*purchaser*) of &c.,
of the other part.

2. WHEREAS, in pursuance of a contract previously entered into between the said (*vendor*) and (*purchaser*), and in consideration of 1,500*l.* sterling, paid by the said (*purchaser*) to the said (*vendor*), the said (*vendor*), at a Court Baron holden for the manor of A. in the said county of B. on the day of , surrendered into the hands of the lord of the said manor ALL, &c. [DESCRIBE *copyhold premises*] TO THE USE of the said (*purchaser*), his heirs and assigns: TO HOLD at the will of the lord, according to the custom of the said manor, subject to the rents and duties, suits and services, therefore due and of right accustomed. AND at the same court the said (*purchaser*) came, and was admitted tenant according to the tenor of the said surrender.

Recital of contract to purchase, and of surrender to purchaser's use and his admission thereupon.

3. AND WHEREAS upon the treaty for the said purchase it was agreed that the said (*vendor*) should enter into the covenants for title hereinafter contained.

That vendor should enter into covenants for title.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of Covenants by

No. II. the said recited agreement, and in consideration of the premises, He
Deed to the said (*vendor*) doth hereby for himself his heirs, executors, and
accompany a administrators, covenants with the said (*purchaser*), his heirs and
previous assigns, that &c. [INSERT *qualified covenants from vendor, that he*
surrender of *has good right to surrender; for quiet enjoyment and freedom from*
Copyholds. *incumbrances, and for further assurance, as in last precedent,*
vendor for title, *incumbrances, and for further assurance, as in last precedent,*
&c. *incumbrances, and for further assurance, as in last precedent,*
clauses 5, 6, 7, p. 304, 305.]

IN WITNESS, &c.

No. III.

CONVEYANCE OF COPYHOLDS OF INHERITANCE BY A MORTGAGOR AND MORTGAGEE, TO A PURCHASER IN FEE.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of covenant to surrender copyholds to mortgagee's use. 3. That surrender was afterwards duly made. 4. That default was made in payment, but that mortgagee had not been admitted tenant. 5. Of contract to sell. 6. That the original mortgage debt has been considerably reduced by subsequent payments. 7. Testatum, mortgagee covenants to surrender to purchaser. 8. Habendum to purchaser in fee. | <ol style="list-style-type: none"> 9. That until surrender mortgagee will stand possessed in trust for purchaser. 10. Covenant from mortgagee that he has done no act to incumber. 11. Further testatum, by which mortgagor releases equity of redemption. 12. Habendum to purchaser in fee. 13. Covenant from mortgagor that mortgagee has good right to surrender, and mortgagor to release and confirm. 14. For quiet enjoyment, and freedom from incumbrances. 15. For further assurance. |
|--|--|

[*This deed must be stamped with a 1l. 15s. deed stamp, and the ad valorem stamp on the purchase money 3,490l. affixed to the surrender or memorandum thereof, if made out of court, or the copy of court-roll of the surrender, if made in court: (stat. 55 Geo. 3, c. 184.)*]

1. THIS INDENTURE, made the day of A.D. 185 , Parties.
BETWEEN (*mortgagee*) of, &c., of the first part, (*mortgagor*) of, &c.,
of the second part, and (*purchaser*) of, &c., of the third part.

2. WHEREAS by indenture bearing date on or about the day
of , in the year 18 , and made between the said *mortgagor*
of the one part, and the said (*mortgagee*) of the other part, *After*
reciting that at a Court Baron, holden in and for the manor of B—, Recital of covenant to surrender copyholds to mortgagee's use.
in the county of Somerset, on the day of the said
(*mortgagor*) had been admitted tenant of the copyhold hereditaments and premises therein and hereinafter described; *To hold*
the same, with the appurtenances, unto the said (*mortgagor*), his

No. III. heirs and assigns for ever, at the will of the lord, according to the custom of the said manor; *subject* to the rents, heriots, duties, suits and services therefore due and of right accustomed; *And also* *reciting* that the said (*mortgagee*) had agreed to lend the said (*mortgagor*) the sum of 1,500*l.* on the security of the said copyhold hereditaments and premises; IT IS WITNESSED, that in consideration of 1,500*l.* sterling, then paid by the said (*mortgagee*) to the said (*mortgagor*) the said (*mortgagor*) did thereby for himself, his heirs, executors and administrators, covenant with the said (*mortgagee*), his heirs, executors, administrators and assigns, that he the said (*mortgagor*), or his heirs, would, at his or their own costs, at or before the next general or other court to be holden in and for the aforesaid manor, surrender or otherwise well and effectually assure unto the use and behoof of the said (*mortgagee*), his heirs and assigns, the said copyhold hereditaments and premises, *to the intent* that the said (*mortgagee*), his heirs and assigns, might be admitted tenant of the same. *To hold* to him, his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor; subject to the rents, heriots, duties, suits and services therefore due and of right accustomed; *subject nevertheless*, to a proviso for redemption, on payment by the said (*mortgagor*), his heirs, executors, administrators or assigns, unto the said (*mortgagee*), his executors, administrators or assigns, of the sum of 1,500*l.* and interest, at the rate of 4*l.* for every 100*l.* by the year, on the day of then next.

That surrender
was afterwards
duly made.

3. AND WHEREAS the said (*mortgagor*) shortly afterwards, in pursuance of his said recited covenant, duly surrendered the said copyhold hereditaments and premises to the use of the said (*mortgagee*), his heirs and assigns, conditionally, for securing the repayment of the said sum of 1,500*l.* and interest at the time aforesaid. (*a*)

(*a*) If the mortgagee has been admitted to the copyholds, substitute for the clause next immediately following—

That mortgagee
was duly
admitted in
pursuance of
conditional
surrender.

“AND WHEREAS at a General Court Baron holden in and for the said manor of B—, in the said county of Somerset, the said (*mortgagee*) was duly admitted tenant to the said copyhold hereditaments and premises, in pursuance of such conditional surrender.”

4. AND WHEREAS default was made by the said (*mortgagor*) in payment of the said sum of 1,500*l.* at the time appointed for payment thereof in the said recited proviso for redemption; but nevertheless the said (*mortgagee*) was not thereupon, nor hath he at any time since, been admitted tenant to the said copyhold hereditaments and premises so surrendered as aforesaid. (*b*)

No. III.

Conveyance of Copyholds of Inheritance by a Mortgagor and Mortgagee to a Purchaser in Fee.

5. AND WHEREAS the said (*mortgagor*) has contracted to sell the said copyhold hereditaments and premises, and the fee-simple and inheritance thereof, free from all incumbrances, to the said (*purchaser*) for the sum of 3,490*l.*

That default was made in payment, but that mortgagee had not been admitted tenant. Of contract to sell.

6. AND WHEREAS the said (*mortgagor*) hath by several payments made at different times, considerably reduced the said mortgage debt; and upon an account this day made up and stated between the said (*mortgagee*) and (*mortgagor*), there appears to be now due and owing to the said (*mortgagee*) for principal and interest upon

That the original mortgage debt has been considerably reduced by subsequent payments.

(*b*) In mortgages of copyhold estates, it is the frequent practice to surrender to the mortgagee's use, but to delay his admission as tenant, in order to save expense; and as, until admission, the surrenderor still remains tenant to the lord, the latter, in the absence of a custom, has no right to call upon the mortgagee to be admitted tenant, either before or after default has been made in payment: (*Baspool v. Long*, 1 Show. 30; S. C., 1 Roll. Abr. 568; *Rex v. Dalleston*, 1 Salk. 316; S. C., Carth. 41; Pre. Cha. 573.) The usual course in such cases, therefore, has been, immediately upon the surrender to make a presentment of it; first, for the purpose of avoiding a second surrender, which might become requisite in case of any considerable delay in the presentment of the first; and, secondly, to prevent a subsequent conditional surrender from obtaining a priority, in consequence of the former surrender becoming void for want of a timely presentment: (*Fowcett v. Louther* 2 Ves. 300.) But as both the lord and steward were fixed with notice, where such presentment was made in due time, and subsequent incumbrancers were thus deprived of their preference, so mortgagees are often content to dispense with an admission. At the same time it must be kept in mind, that until a mortgagee is admitted, he will have no legal right to the possession, nor can he maintain ejectment for the recovery of it: neither can he surrender to the use of a third party. In case, therefore, of a sale or transfer of the mortgage, it will be necessary for the mortgagee to be admitted either previously or subsequently to the execution of the deed of sale, or transfer, in order that he may be enabled to make an effectual surrender to the intended purchaser or transferee. If he be admitted previously, the deed should set out the time when such admission was made, and if the mortgagee has subsequently surrendered to the use of the purchaser, or transferee, that fact should be recited. If, however, he has made no such surrender, he should then covenant to surrender to the use of the intended purchaser or transferee, and that in the meantime, until such surrender is made and perfected, he will stand possessed of the copyhold premises, in trust for such intended purchaser or transferee. If the mortgagee has not been admitted, that fact should also be stated, and he should covenant that he will procure himself to be admitted tenant, and immediately thereupon surrender to the use of the purchaser or transferee.

Practical observations.

No. III.

Conveyance of
Copyholds
by a Mortgagor
and Mortgagee
to a Purchaser
in Fee.

Testatum,
mortgagee
covenants to
surrender to
purchaser.

the said recited mortgage security, the sum of 430*l.* and no more, as the said (*mortgagee*) doth hereby testify and acknowledge.

7. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 430*l.* sterling, this day paid by the said (*purchaser*) to the said (*mortgagee*) (at the request and by the direction of the said (*mortgagor*), testified by his being a party hereto and concurring herein), the receipt of which the said (*mortgagee*) hereby acknowledges, and also that the same is in full satisfaction of all principal moneys and interest due to him on his said recited mortgage security, and therefrom doth by these presents acquit, release, exonerate and for ever discharge the said (*purchaser*) his heirs, executors, administrators and assigns, and also the said (*mortgagor*), his heirs, executors, and administrators; and also in consideration of the sum of 3,060*l.* sterling (the residue of the said purchase money), at the same time as aforesaid paid by the said (*purchaser*), to the said (*mortgagor*), the receipt and payment in manner aforesaid of which two several sums of 430*l.* and 3,060*l.*, making together the sum of 3,490*l.* the purchase money of the said copyhold hereditaments and premises, the said (*mortgagor*) hereby acknowledges, and therefrom doth by these presents release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns; HE the said (*mortgagee*), (at the request and by the direction of the said (*mortgagor*) testified as aforesaid,) DOTH hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that he the said (*mortgagee*), or his heirs, shall and will, at the costs of the said (*mortgagor*), his heirs, executors, administrators or assigns, at or before the next general or other court to be holden in and for the said manor of B., in the said county of Somerset, or other the manor or manors whereof the said copyhold hereditaments are holden [procure himself or themselves to be duly admitted under the said hereinbefore recited conditional surrender of the said (*mortgagor*) to all and singular the said copyholds, hereditaments and premises, and immediately upon such admission (c)], well and effectually surrender the same into the hands

(c) If the mortgagee has been already admitted, the words within brackets must be left out.

of the lord or lady for the time being of the said manor, by the acceptance of the steward, or by the hands of two or more customary tenants of the said manor, according to the custom or respective customs thereof, or otherwise well and sufficiently convey and assure, to the use and behoof of the said (*purchaser*), his heirs and assigns, ALL that copyhold and customary messuage and tenement, lands and premises, situate, lying and being within the said manor of B., in the said county of Somerset, all which said premises are described in the said hereinbefore lastly recited surrender, as ALL [HERE INSERT *particular description.*] AND all the estate, right, title and interest, both legal and equitable of them the said (*mortgagee*) and (*mortgagor*) therein, TO THE INTENT that the said (*purchaser*), or his heirs, may be admitted tenant to the said copyhold hereditaments and premises.

No. III.
—
Conveyance of
Copyholds
of Inheritance
by a Mortgagor
to a Purchaser
in Fee.
—

8. TO HOLD to him, his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor, subject to the rents, heriots, duties, suits and services therefore due and of right accustomed.

Habendum to
purchaser in
fee.

9. AND FURTHER, that in the meantime, and until such surrender shall be made and perfected, and the said (*purchaser*), or his heirs admitted tenant to the said copyhold hereditaments and premises, the said (*mortgagee*) and his heirs, shall and will stand and be possessed thereof, IN TRUST and for the sole use and benefit of the said (*purchaser*), his heirs, and assigns for ever, and to be surrendered and disposed of from time to time as he or they shall direct or appoint.

That until
surrender
mortgagee will
stand possessed
in trust for
purchaser.

10. AND ALSO that the said (*mortgagee*) hath not done or permitted, or willingly or knowingly suffered, or been party or privy to any act, deed, matter or thing whatsoever, whereby or by reason or means whereof, the said copyhold hereditaments and premises, or any part of the same are, is, can, shall or may be impeached, charged, incumbered, or prejudicially affected in any manner howsoever.

Covenant from
mortgagee that
he has done no
act to incumber.

11. AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid the said (*mortgagor*) DOETH, by these

Further
testatum, by
which mort-

No. III.

*Conveyance of
Copyholds
of Inheritance
by a Mortgagor
and Mortgagee
to a Purchaser
in Fee.*

gagor releases
equity of
redemption.

Habendum to
purchaser in fee.

presents release, ratify and confirm unto the said (*purchaser*) and his heirs, ALL that the right of equity of redemption of him the said (*mortgagor*), of and in ALL those the aforesaid copyhold hereditaments and premises, with their and every of their rights, members and appurtenances, AND all the estate, right, title and interest, benefit, claim and demand whatsoever of him the said (*mortgagor*) therein.

12. TO HAVE AND TO HOLD the said (*short general description*) and all and singular other the copyhold hereditaments and premises hereby released, with their appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns for ever, at the will of the lord according to the custom of the said manor, *subject* to the rents, heriots, duties, suits and services therefore due and of right accustomed.

Covenant from
mortgagor, that
mortgagee has
good right to
surrender, and
mortgagor to
release and
confirm.

13. AND the said (*mortgagor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that (notwithstanding any act, deed, matter or thing whatsoever done or permitted by him the said (*mortgagor*) to the contrary), the said (*mortgagee*) now hath in himself good right to surrender, and the said (*mortgagor*) to release and confirm, the said copyhold hereditaments and premises, with their appurtenances, to the use of the said (*purchaser*), his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents.

For quiet
enjoyment and
freedom from
incumbrances.

14. AND ALSO that (notwithstanding any such act, deed, matter or thing as aforesaid), the same copyhold hereditaments and premises shall or may from henceforth, from time to time and at all times, be peaceably and quietly held and enjoyed according to the limitations hereinbefore expressed and contained, without any lawful let, suit, eviction, ejection, interruption, molestation or disturbance of or by the said (*mortgagor*), or any other person or persons whomsoever rightfully claiming or to claim by, from, through, under or in trust for him; AND that freely, clearly and absolutely indemnified by the said (*mortgagor*), his heirs, executors or administrators, of and from all estates, rights, titles, liens, charges and incumbrances whatsoever created or occasioned by the said (*mort-*

gagor), or any other person or persons whomsoever rightfully claiming or to claim by, from, through, under or in trust for him, or by or through his acts, deeds, default, privity or procurement, **SAVE AND EXCEPTING** always the rents, heriots, duties, suits and services to be rendered, paid, done and performed to the lord or lady of the said manor of B., for or in respect of the said copyhold hereditaments and premises, and of right accustomed to be paid and performed.

No. III.

Conveyance of
Copyholds
of Inheritance
by a Mortgagor
and Mortgagee
to a Purchaser
in Fee.

15. **AND MOREOVER** that the said (*mortgagor*) and all persons rightfully claiming any estate or interest, legal or equitable, in the said copyhold hereditaments and premises, through or under him, shall and will from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his heirs or assigns, enter into, execute and perfect all such further acts, deeds, devices, conveyances, surrenders and assurances whatsoever for the further, better or more perfectly or satisfactorily surrendering, assuring and confirming the said copyhold hereditaments and premises, with their appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns, at the will of the lord, according to the custom of the said manor and the true intent and meaning of these presents, as the said (*purchaser*), his heirs or assigns, or his or their counsel in the law, shall require.

For further
assurance.

IN WITNESS, &c.

No. IV.

COVENANT TO SURRENDER COPYHOLDS FOR LIVES.

- | | |
|---|--|
| 1. Parties. | 4. Testatum by which vendor covenants to surrender to purchaser's use. |
| 3. Recital that copyholder was admitted tenant. | 5. Habendum. |
| 3. Of contract to purchase. | |

Parties.

1. THIS INDENTURE made the day of A. D., 185 ,
BETWEEN (*vendor*) of, &c., of the one part, and (*purchaser*) of,
&c., of the other part.

Recital that
copyholder was
admitted tenant

2. WHEREAS at a Court Baron or Customary Court, held in and
for the manor of T——, in the county of C——, on the day
of , the said (*vendor*) was admitted tenant to the said copyhold
hereditaments and premises hereinafter described, and hereby
covenanted to be surrendered, with the appurtenances, To
HOLD to him, his executors, administrators and assigns, for and
during the lives of A. B., then aged seven years, or thereabouts,
C. D., then aged twelve years, or thereabouts, and E. T., then
aged twenty-seven years or thereabouts, and the lives and life of
the survivors and survivor of them, at the will of the lord,
according to the custom of the said manor, by fealty, suit of
court, and a heriot of (*state nature of heriot*) on the dropping of
each of the said lives, as appears by copy of court roll of the said
manor, bearing date on or about the day of .

Of contract to
purchase.

3. AND WHEREAS the said (*purchaser*) has contracted with the
said (*vendor*), for the purchase of the said copyhold premises, free
from incumbrances, except as hereinafter is excepted for the sum
of £

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of £ sterling, paid by the said (*purchaser*) to the said (*vendor*), on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth by these presents release and for ever discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*) DOTH by these presents, for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his executors, administrators, and assigns, that he the said (*vendor*), his executors or administrators, will at or before the next general or other court, or next general meeting to be held, in and for the said manor of T—, or other the manor or manors whereof the said copyhold premises are holden, well and effectually surrender into the hands of the lord or lady for the time being of the said manor, or manors, according to the custom or respective customs thereof, and also well and effectually assure unto, or to the use and behoof of the said (*purchaser*), his executors, administrators and assigns, ALL, &c. [DESCRIBE *parcels*], with their appurtenances. AND all the estate, right, title, interest, term and terms for life and lives, tenant-right and right of renewal, property, possession, benefit, claim and demand whatsoever, both at law and equity, of him the said (*vendor*), of, in, to, out of or upon the said copyhold premises, TO THE INTENT that the said (*purchaser*), his executors, administrators and assigns, may be lawfully admitted tenant of the same premises.

No. IV

Covenant to
surrender
Copyholds for
Lives.

Testatum, on
which vendor
covenants to
surrender to
purchaser's use.

5. TO HOLD unto him the said (*purchaser*), his executors, administrators and assigns, for and during the natural lives of the said A. B., C. D., and E. F., and the lives and life of the survivors and survivor of them, at the will of the lord, according to the custom of the said manor or manors, and subject to the customary rents duties, suits and services, therefore due and of right accustomed; AND FURTHER, that in the meantime, and until such surrender shall be made and perfected by the admission of the said (*purchaser*) as tenant to the said copyhold premises, the said (*vendor*), his executors, administrators or assigns, shall and will stand possessed of the same copyhold premises, IN TRUST and

Habendum.

No. IV. for the sole benefit of the said (*purchaser*), his executors, administrators and assigns. [INSERT COVENANTS *for title &c., ut ante*, No. I., clauses 5, 6, 7, pp. 304, 305, *but substituting* “executors and administrators for heirs.”]

*Covenant to
surrender
Copyholds for
Lives.*

IN WITNESS, &c.

No. V.

CONVEYANCE OF THE COPYHOLD ESTATE OF A BANKRUPT BY THE COMMISSIONER AND ASSIGNEES UNDER A PETITION IN BANKRUPTCY, TO BE ENTERED ON THE COURT ROLLS. (a) VARIATION, WHERE THE BANKRUPT IS TENANT IN TAIL IN POSSESSION.

1. Parties.

2. Recital of admission of bankrupt to copyhold premises.

3. Of sale by auction.

4. Testatum.

5. Authority to surrender copyholds to the use of purchaser in fee.

6. Covenant against incumbrances.

Substituted clauses.

A. Recital of will creating entail.

B. Of death of testator, and of accession of tenant for life to copyhold premises.

C. Of death of tenant for life, and accession of tenant in tail.

D. Habendum to purchase, discharged of all estates tail.

1. THIS INDENTURE, made the day of , A.D. 185 , Parties.
BETWEEN (*commissioner*), of, &c., the commissioner acting in the

(a) The Bankruptcy Consolidation Act (12 & 13 Vict. c. 106), which vests all the real estates of bankrupts in the assignees for the time being for the benefit of the creditors of the bankrupt, by virtue of their appointment, without any deed of conveyance for that purpose, contains an express exception of copyhold or customary estates (sect. 142): but the same act with respect to copyholds, enacts, "that the court shall have power to sell, and by deed indented and enrolled in the courts of the manor or manors whereof the lands respectively may be holden, to convey, for the benefit of the creditors, any copyhold or customary lands, or any interest to which any bankrupt is entitled therein, and thereby to entitle or authorize any person or persons on behalf of the Court of Bankruptcy to surrender the same for the purpose of any purchaser being admitted thereto."

And by the same statute, s. 108, it is enacted, that such of the clauses contained in the Fine and Recovery Substitution Act (3 & 4 Will. 4, c. 74, ss. 55-69, 71-79, 81-83), "shall extend and apply to proceedings in bankruptcy under a petition for adjudication of bankruptcy as fully and effectually as if those clauses were re-enacted in this act, and expressly extended to such proceedings."

The statutes 21 Jac. 1, c. 19, s. 12; 21 Geo. 1, c. 19, s. 12, and 6 Geo. 4, c. 16, s. 65, empowered the commissioners, by their indenture of bargain and

No. V. execution of a petition for adjudication in bankruptcy, issued on the day of against (*bankrupt*), of, &c., of the first part, (*official Conveyance of the Copyhold Estate of* assignee), of, &c., of the second part, (*creditors' assignees*), of, &c., of the third part, (*bankrupt*), of, &c., of the fourth part, (*person a Bankrupt by Commissioner and Assignees.* nominated by the court to surrender copyholds), of the fifth part, and (*purchaser*), of, &c., of the sixth part.

Recital of admission of bankrupt to copyhold premises.

2. WHEREAS (*b*) at a Court Baron holden in and for the manor of A—— in the county of B——, on the day of , the said (*bankrupt*) was admitted tenant to the copyhold hereditaments

sale enrolled, to bar the estates tail of bankrupts, which was binding on such bankrupt tenant in tail and his issue, and all others whom he might have barred : (*Jervis v. Tayleur*, 3 B. & Ald. 557; *Doe d. Spencer v. Clark*, 5 B. & Ald. 458.) These enactments were afterwards repealed by the statute 3 & 4 Will. 4, c. 74, s. 55. By the last-mentioned statute, all such powers of disposition as a bankrupt might have exercised are conferred upon the commissioners acting under the fiat.

(*b*) If the copyholds are entailed, substitute for clause 2 the three following clauses :—

Recital of will creating entail.

A. "WHEREAS (*testator*), late of, &c., by his last will, dated the day of in the year , amongst other devises and bequests, devised the hereditaments and premises hereinafter described unto (*bankrupt's father*) for the term of his natural life, with remainder to his first and other sons in tail general, with divers remainders over."

Of death of testator, and of accession of tenant for life to copyhold premises.

B. "AND WHEREAS the said (*testator*) died on or about the day of in the year , without having altered or revoked his said will, leaving the said (*bankrupt's father*) him surviving, and who, as such devisee as aforesaid, was duly admitted tenant to the said copyhold hereditaments and premises, on or about the day of in the year ."

Of death of tenant for life, and accession of tenant in tail.

C. "AND WHEREAS the said (*bankrupt's father*) died on or about the day of in the year , leaving the said (*bankrupt*) his eldest son and heir in tail him surviving, and who, as such tenant in tail, was duly admitted tenant to the said copyhold hereditaments and premises."

and premises hereinafter described, TO HOLD the same, with the appurtenances, unto the said (*bankrupt*), his heirs and assigns, for ever, at the will of the lord, according to the custom of the said manor, subject to the rents, duties, suits and services therefore due and of right accustomed.

No. V.

Conveyance
of the Copyhold
Estate of
a Bankrupt by
Commissioner
and Assignees.

3. AND WHEREAS the said copyhold hereditaments and premises, forming part of the said bankrupt's estate, were on the day of offered for sale by public auction, under the direction of the Court of Bankruptcy, pursuant to public advertisement, according to certain printed conditions of sale, at which said auction the said (*purchaser*), being the highest bidder, was declared to be the purchaser of the said copyhold hereditaments and premises at the sum of 1,200*l*.

Of sale by
auction.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 1,200*l*. sterling, already paid by the said (*purchaser*) to the said (*official assignee*), HE, the said (*commissioner*), for the benefit of the creditors of the said (*bankrupt*), BOTH by this present deed indented, and which is intended to be enrolled in the court or courts of the manor or manors whereof the said copyhold hereditaments and premises are holden, bargain, sell and dispose of, the said (*official assignee*) and (*creditors' assignees*), DO by these presents release, and the said (*bankrupt*) BOTH by these presents grant, release and confirm, unto the said (*purchaser*) and his heirs, ALL (DESCRIBE (*parcels*), with the appurtenances thereunto belonging ; AND all the estate, right, title and interest, both legal and equitable, of him the said (*bankrupt*), or which he, or the said parties hereto of the first three parts, have any power to convey or dispose of. (c)

Testatum.

(c) If the conveyance is of an estate tail, insert here—

D. " TO HOLD the said copyhold hereditaments and premises freed and discharged of all estates tail of the said (*bankrupt*) therein, and all estates, rights, titles, interests and powers, to take effect after the determination or in defeazance of such estates tail, unto and to the use of the said (*purchaser*), his heirs and assigns."

Habendum to
purchaser
discharged of
all estates tail.

No. V.

*Conveyance
of a Copyhold
Estate of
a Bankrupt by
Commissioner
and Assignees.*

Authority to
surrender
copyholds to
the use of
purchaser in fee.

5. AND for the further and more effectually assuring the said copyhold hereditaments and premises, the said (*commissioner*), in exercise of the powers vested in him under or by virtue of an act made and passed in the twelfth and thirteenth years of the reign of Her present Majesty Queen Victoria, intituled *An Act to amend and consolidate the Laws relating to Bankrupts*, DOTH by these presents authorize (*name of person*), as a person on behalf of the Court of Bankruptcy, at or before the next general or other court to be holden in or for the said manor of A——, well and effectually to surrender into the hands of the lord or lady for the time being of the said manor, according to the custom thereof, TO THE USE AND BEHOOF of the said (*purchaser*), his heirs or assigns, all and singular the aforesaid copyhold hereditaments and premises, TO THE INTENT that the said (*purchaser*), his heirs or assigns, may be admitted tenant of the said copyhold hereditaments and premises on the court rolls of the said manor, TO HOLD to him, his heirs and assigns, for ever, at the will of the lord, according to the custom of the said manor, subject to the rents, heriots, duties, suits and services, therefore due and of right accustomed.

Covenant
against
incumbrances.

6. AND each of them the said (*commissioner*), (*official assignee*), (*creditors' assignees*) and (*bankrupt*), do hereby severally covenant with the said (*purchaser*), his heirs and assigns, that they have not been party or privy to any act or default whereby or by means whereof the said copyhold hereditaments, or any of them, are, is, can, shall, or may be alienated, impeached, forfeited or incumbered in any manner howsoever.

SECTION IV.

ASSURANCES UNDER THE FINE AND RECOVERY
SUBSTITUTION ACT.

NO. I.—CONVEYANCE BY GRANT AND RELEASE BY TENANT IN TAIL FOR THE PURPOSE OF BARRING AN ESTATE TAIL, AND TAKING A RECONVEYANCE TO USUAL DOWER USES. VARIATION WHERE THE ASSURANCE IS MADE WITH THE CONSENT OF THE PROTECTOR.

NO. II.—CONSENT OF PROTECTOR BY A DISTINCT DEED, ENABLING THE TENANT IN TAIL TO BAR HIS ESTATE TAIL AND THE REMAINDERS OVER. VARIATION WHERE THE ENTAIL WAS CREATED BY WILL.

NO. III.—CONVEYANCE BY A TENANT IN TAIL IN POSSESSION BY GRANT AND RELEASE TO A PURCHASER TO USUAL DOWER USES. VARIATION WHERE THE VENDOR'S WIFE CONCURS TO RELEASE HER DOWER.

NO. IV.—CONVEYANCE BY FATHER, TENANT FOR LIFE AND PROTECTOR OF A SETTLEMENT, AND HIS ELDEST SON, TENANT IN TAIL IN REMAINDER, FOR THE PURPOSE OF BARRING THE ENTAIL, AND TAKING BACK AN ESTATE FOR THE LIFE OF THE FATHER, SUBJECT TO SUCH USES AS THE FATHER AND SON SHALL JOINTLY APPOINT, WITH THE ULTIMATE REMAINDER TO THE SON IN FEE.

NO. V.—CONVEYANCE BY TENANT IN TAIL WITHOUT THE CONSENT OF THE PROTECTOR, WITH COVENANT TO PERFECT THE TITLE AT A FUTURE PERIOD.

NO. VI.—FURTHER ASSURANCE IN PURSUANCE OF THE COVENANT CONTAINED IN LAST PRECEDENT.

NO. VII.—SURRENDER OF COPYHOLDS OUT OF COURT FOR THE PURPOSE OF BARRING AN ESTATE TAIL. VARIATION WHERE THE PROTECTOR CONSENTS.

NO. VIII.—FORM OF SURRENDER WHEN MADE IN COURT.

NO. IX.—CONVEYANCE BY AN EQUITABLE TENANT IN TAIL OF COPYHOLDS, WHO IS ALSO SEISED OF THE LEGAL FEE, TO A PURCHASER.

NO. X.—DEED OF CONFIRMATION BY WAY OF FURTHER ASSURANCE BY HUSBAND AND WIFE, OF LANDS PREVIOUSLY CONVEYED BY THEM TO A PURCHASER, AND OF WHICH A FINE WAS COVENANTED TO BE LEVIED BUT WAS NOT LEVIED ACCORDINGLY: THE PRESENT DEED IS TO BE ACKNOWLEDGED TO SUPPLY THAT OMISSION.

- No. XI.—AFFIDAVIT OF ACKNOWLEDGMENT BEFORE PERPETUAL COMMISSIONERS, WHERE A THIRD PERSON, A PRACTISING ATTORNEY, DEPOSES TO ALL THE FACTS. VARIATION WHERE PART OF THE CONSIDERATION IS PAID TO THE WIFE, OR A PROVISION HAS BEEN MADE FOR HER BY DEED.
- No. XII.—FORM OF AFFIDAVIT TO ACCOMPANY THE ACKNOWLEDGMENT OF A MARRIED WOMAN WHO IS UNKNOWN TO THE COMMISSIONERS, OR THE COMMISSIONER TO WHOM SHE IS KNOWN IS ACTING AS HER ATTORNEY OR SOLICITOR. VARIATION WHERE THE ACKNOWLEDGMENT IS BY TWO MARRIED WOMEN.
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- No. XIV.—FORM OF CERTIFICATE OF ACKNOWLEDGMENT TAKEN BY COMMISSIONERS SPECIALLY APPOINTED.
- No. XV.—FORM OF RETURN TO BE INDORSED BY SPECIAL COMMISSIONERS, WHO TAKE THE ACKNOWLEDGMENT, ON THE BACK OF THE COMMISSION.
- No. XVI.—FORM OF AFFIDAVIT TO BE MADE BY ONE OF THE COMMISSIONERS WHERE THE ACKNOWLEDGMENT IS TAKEN ABROAD.
- No. XVII.—FORM OF NOTARIAL CERTIFICATE TO BE ANNEXED TO THE PRECEDING AFFIDAVIT.

No. I.

CONVEYANCE BY GRANT AND RELEASE (a) BY TENANT IN TAIL FOR THE PURPOSE OF BARRING AN ESTATE TAIL, AND TAKING A RECONVEYANCE TO USUAL DOWER USES. VARIATION WHERE THE ASSURANCE IS MADE WITH THE CONSENT OF THE PROTECTOR.

- | | |
|---|---|
| 1. Parties. | 3. Habendum to trustees to uses to bar dower. |
| 2. Testatum, by which tenant in tail grants and releases. | 4. Declaration to debar widow of dower. |

1. THIS INDENTURE, made the day of A.D. 185 , Parties.
BETWEEN (*tenant in tail*), of, &c., and (*Christian name*), his wife, of
the one part, and (*trustees to uses*), of, &c., of the other part.*

* If the protector concurs for the purpose of consenting he must be the party of the second part.

(a) A deed of bargain and sale is sometimes used as a disentailing assurance, and also, at the same time, as a conveyance to a purchaser. It is not, however, so well adapted to either of those purposes as a deed of grant and release; because a bargain and sale enrolled executes the use at once in the bargainee, so that all ulterior uses to arise out of his seisin would be mere equitable estates; consequently, under the disentailing deed, by way of bargain and sale, a tenant in tail cannot have the property limited to him to uses to bar dower; neither can such uses be limited by this mode of conveyance to a purchaser. Another disadvantage attending a bargain and sale as a disentailing assurance is, that there is strong ground for holding that a 5*l.* stamp will attach whenever it goes beyond the mere purpose of effecting a sale to a purchaser, as where the object is to resettle the estate, or to convert the estate tail into a fee-simple. As every disentailing deed requires enrolment, it has been considered advisable to omit the words "bargain and sell" in the granting clause, to prevent the possibility of the instrument operating as a bargain and sale enrolled, and thus vesting the use in the grantee or releasee: (2 Hughes Pract. Sales, 253.)

As the expense of enrolment falls upon the vendor, which, in the case of a lengthy deed, is an important consideration, it is generally advantageous for him to bar the entail by a distinct deed from that by which the property is conveyed to the purchaser. So if, as not unfrequently happens, a tenant in tail is desirous of selling a portion of his property, and barring the entail in the remainder, it will be necessary that this should be done by an assurance distinct from the purchase deed: (2 Hughes Pract. Sales, 252.)

Practical observations.

Advantages of deed of grant and release over a deed of bargain and sale.

No. I.

Conveyance
by Grant and
Release by
Tenant in tail
for the purpose
of barring an
Estate tail and
taking a
reconveyance to
usual
dower uses, &c.

Entail could
formerly have
only been barred
by fine and
recovery.

Tenant in tail,
where there is
a protector, is
prevented from
barring the
entail without
such protector's
consent.

But with such
consent, or
where there is
no protector,
tenant in tail
may bar his
estate tail and
all remainders
expectant
thereon.

Nature of the
duties and office
of the protector.

2. WITNESSETH that for the purpose of barring and destroying the estate tail of the said (*tenant in tail*) in the hereditaments

A tenant in tail could not formerly have barred the entail without levying a fine, or suffering a recovery: two very expensive modes of assurance, both of which were finally abolished by the statute 3 & 4 Will. 4, c. 74, and more simple modes of assurance substituted in their place. By this statute, every tenant in tail, whether in possession, reversion, contingency or otherwise, is empowered, after the 31st day of December, 1833, to dispose of the entailed lands, either in fee, or for any lesser estate, as against all persons whose estates are to take effect after, or in defeasance of any such estate tail, saving always the rights of all persons in respect of estates prior to the estate tail, and the right of all other persons, except those against whom such disposition is by this act authorized to be made: (sect. 15.) The assurance must, however, be by deed; consequently, an agreement, although under seal, will be insufficient to bar the entail. An agreement will, however, be so far personally binding upon the tenant in tail himself, that a court of equity would compel him to perform it specifically, by executing a formal disentailing deed (*Homcliff v. Warsley*, 1 Cha. Cas. 234; *Layle v. Freeland*, 2 Ventr. 320; *Legate v. Sewell*, 1 P. Wms. 91; *Radford v. Wilson*, 3 Atk. 815; *Boteler v. Allington*, 1 Bro. C. C. 72); and now, under a rule (Reg. 15), framed in pursuance of the statute 1 Will. 4, c. 36, the court is empowered to execute a decree against the tenant in tail, who is in prison for contempt, for refusing to convey in pursuance of such contract. But a contract of this kind would not be enforced against the issue in tail, and still less against those entitled in remainder or reversion.

Nor can a tenant in tail, where there is a protector to the settlement under the above-mentioned act, bar the remainders over expectant upon the determination of his estate tail, without the concurrence or consent of such protector.

But where there is no protector to the settlement, or, being such, the latter consents to the disentailing assurance, then the tenant in tail may by a simple deed (it need not be an indenture) bar his own estate tail and all remainders and reversions expectant thereon, in the same manner as he could formerly have done by suffering a common recovery. But where there is a protector who withholds his consent, a disentailing deed by the tenant in tail would only have the effect of barring his own estate tail in the lands, without effecting the remainders over, in the same manner that a fine, with proclamations, would have done previously to the passing of this act.

The protector is a new character, deriving his origin entirely from the Fine and Recovery Substitution Act; but his office closely resembles that of the tenant to the *præcipe* under the old system, and operates, in like manner, as a kind of check upon the too free alienation of entailed property. There is, however, a distinction as to their qualifications. The tenant to the *præcipe* must have been seised of the immediate estate of freehold (whether by right or wrong was immaterial), upon which the estate tail was expectant; his very existence being dependent upon his estate in the land: (Lit. s. 519; Prest. Shep. Touch. 42; Plow. 514; Pig. Rec. 28; Doct. & Stud. 49; *Althan v. Anglesea*, Gilb. Eq. Ca. 16.) But the protector is a kind of mixed character, sometimes deriving his origin from the estate which he himself takes in the property (ss. 28, 30, 33), at others from a mere appointment by the settlor, without taking any estate or interest whatever (s. 33); and that even to the exclusion of persons who, but for such appointment, would, from taking a preceding estate in the premises, have filled the character of protector under the act. So much, indeed, are the protector's duties of a personal nature, that his office does not determine, although he alienates the very estate in the premises which constituted him the protector (ss. 23, 23.) And where the protectorship arises by means of a preceding estate, it is not necessary that, like the tenant to the *præcipe* under the pre-existing law, he should be seised of an estate of freehold; for by the provisions of this act, an estate for years, determinable on a life or lives, will be

and premises hereinafter described, and all estates, rights, titles, interests and powers, to take effect after the determination or in

No. I.

*Conveyance
by Grant and
Release by
Tenant in tail
for the purpose
of barring an
Estate tail and
taking a
reconveyance
to usual
dower uses, &c.*

sufficient to make him a protector (s. 22), although an absolute term of years, however long in point of duration, will not have that effect. Neither will the estate which a party takes as tenant in dower (s. 27), heir, executor, administrator or assign, constitute him or her a protector (*ib.*) Neither will a lessee at a rent created or confirmed by a settlement (s. 26), nor a bare trustee (s. 27), (unless where, under a settlement made prior to the passing of the act, he would have been the proper person to have been made the tenant to the *præcipe*), as such become qualified for the protectorship. But where there shall be more than one estate, prior to the estate tail, the owner of which (who but for the two preceding clauses, or either of them, be excluded, then the person (if any) who, if such estate did not exist would have been the protector, shall be such (s. 28.)

Where the prior estate of a married woman (sufficient to constitute her a protector) is not settled to her separate use, she and her husband together will be the protector; but if settled to her separate use, she alone will be the protector, and in such case she may consent to an alienation in the same manner as if she were sole (s. 24); but if she be tenant in tail she cannot convey without his consent, and even with such concurrence it will be requisite that she should acknowledge the deed of conveyance. If, however, the husband is of unsound mind, whether found so by inquisition or not, or he is from any other cause incapable of executing the deed—or his residence be unknown—or he is living apart from his wife either by mutual consent or sentence of divorce—or transported beyond the seas—or any other cause whatever, the Court of Common Pleas, by an order in a summary way, upon the application of the wife, upon such evidence as the court shall deem meet, will dispense with the concurrence of the husband in any case in which his concurrence is required by this act: (s. 91.) And where a husband is living apart from his wife, although his residence be known, and an application has been made to join in the conveyance, which he has refused to do, an order to the above effect may nevertheless be obtained, provided the husband takes no interest in the property: (*Re Fanny Maria Browne*, C. P. January 14, 1846, 6 L. T. 297.)

Where the protector is a married woman.

In case the protector should become a lunatic, the Lord Chancellor, or the person for the time entrusted by the Crown with the custody of the persons or estates of lunatics, will be the protector: (s. 33.) And where the protector is a convicted felon, or where, not being the owner of the prior estate, he is an infant, or not to be found; or where, by the settlement the owner of the prior estate is not the protector, and there is no appointment of one; or where generally there is no protector, if there be a sufficient estate to constitute one, the Court of Chancery will be the protector: (*ib.*)

Where the protector becomes lunatic.

Convicted felon.

The settlor entailing lands is empowered by the settlement to appoint any number of persons, not exceeding three, and not being aliens, to be the protectors; and he is also empowered by a power of appointment in the settlement to perpetuate the protectorship to any persons not exceeding three, nor being aliens, whom he may think proper (s. 32); but the same section also provides that every deed appointing a protector under a power in a settlement, and every deed by which a protector shall relinquish his office, shall be void, unless enrolled in Chancery within six calendar months after the execution thereof.

Protector, how appointed.

The protector has the absolute power of giving or withholding his consent, and any shift or contrivance by which it shall be attempted to control this power, and any agreement to prevent him from exercising his absolute discretion, or entered into by him to withhold his consent, will be void (s. 36); nor shall he be deemed a trustee with respect to his power to consent; neither shall a court of equity interfere to restrain him in the exercise of it, nor treat his giving consent as a breach of trust; and the rule as to dealings between donees

Power of the protector as to the giving or withholding of his consent.

No. I.

*Conveyance
by Grant and
Release by
Tenant in tail
for the purpose
of bearing an
Estate tail and
taking a
reconveyance
to usual
dower uses, &c.*

defeasance of such estate tail, and to limit the same to the uses hereinafter declared, the said (*tenant in tail*) (*b*) DOTH by these

(*b*) If the protector is a concurring and consenting party add—

“With the consent of the said protector (testified by his being a party hereto, and concurring herein.)”

and objects of powers, will not apply to dealings between protectors and tenant in tail (s. 37.)

Consent of the protector unaffected by his ownership in the property.

A protector does not, as we have already noticed, cease to be the protector by conveying away the estate which originally constituted him such, but he will retain the same authority as to giving or withholding his consent to the disentailing assurance he possessed previously. And as on the one hand the alienation of his estate will not deprive him of the protectorship, so on the other he may consent to the disposition by the tenant in tail, and still retain his own estate; or he may, if he thinks proper, convey as well as consent; and if he adopts the latter course, whatever estate he has in the lands may be included in the conveyance; but, if he merely consents, the effect of such consent will be to bar all the ulterior limitations to take effect after such estate tail, but his own estate in the premises will remain as it was before.

By what instrument protector's consent may be given.

The consent of the protector may be given either in the disentailing assurance or by a distinct deed, to be executed, either at, or at any time before, the assurance shall be made. If given on a subsequent day, the consent will be inoperative (s. 42.) The consent if once given is irrevocable (s. 44.)

Assurance under the act will pass both legal and equitable estate and also mere equities or rights.

An assurance under this act will pass estates, both legal and equitable, vested or contingent, and also mere equities and rights; so that where the issue in tail would have been barred by a fine, with proclamations, under the old system, the person who, unless so barred, would have been the tenant in tail, may still by a conveyance under such act produce the same effect as he could formerly have done by being vouched in a common recovery (s. 19.) And notwithstanding a conveyance without the consent of the protector will only pass a base fee, still, where such base fee and the remainder or reversion unite in the same person, and there shall be no intermediate estate between the base fee and such remainder or reversion, then the base fee will be enlarged into as large an estate as the tenant in tail could have created without the consent of the protector.

Protector's consent does not affect estates prior to the estate tail.

The act now under consideration only enables the tenant in tail, even with the protector's consent, to dispose of the entailed lands as against the persons claiming under the entail and those whose estates are to take effect after it, and does not affect prior estates (s. 15.) Thus, for example, suppose lands to be limited to A. for life, remainder to B. for life, remainder to C. in tail, with divers remainders over, and C., during the life of A. and B., with the protector's consent were to execute a disentailing deed, its effect would be to bar C.'s estate tail, and the remainders expectant thereon, but the preceding estates for the life of A. and B. would remain as they were before.

Assurances under the act cannot create a larger estate than that out of which the estate tail is derived.

Neither can any assurance under the act convey a larger estate than is commensurate with that out of which it is derived. In this respect the law remains unaltered; for even previously to the act now under discussion, where an estate tail was limited out of a lesser estate than a fee-simple absolute, the tenant in tail could not, by suffering a common recovery, have extended his estate beyond the duration of the estate out of which it was carved. If, therefore, it had been derived out of a base fee, or a fee subject to a condition, or an estate tail never effectually barred, so as to enlarge the original estate into a fee simple, a recovery suffered by the owner of such derivative estate tail could not, in right of such derivative estate tail, have had any other effect than to bar the remainder

presents grant, release and confirm, and the said (*Christian name*), the wife of the said (*tenant in tail*), for the purpose of releasing her right of dower in the said premises, BOTH by these presents, remise, release and quit claim unto the said (*trustees to uses*), and his heirs, ALL, &c. [HERE DESCRIBE *parcels*], AND all and singular other the premises described in and settled by a certain indenture of lease and release, dated respectively on or about the and days of and made or expressed to be made between [HERE *set out names of parties*], (being a settlement made previously to and in contemplation of a marriage between the said (*settlor*) and (*wife*), and which was afterwards duly had and solemnized.) AND all rights, members and appurtenances to the said hereditaments and premises belonging or appertaining; AND all the estate, right, title and interest, both legal and equitable, of him the said (*tenant in tail*) therein.

No. 1.

Conveyance
by Grant and
Release by
Tenant in tail
for the purpose
of barring an
Estate tail and
taking a
reconveyance
to usual
dower uses, &c.

or reversion in fee of the person by whom the estate tail was created, and of all persons claiming under him. But a tenant in tail, by suffering a recovery, might have defeated a condition subsequent, annexed to his estate, a breach of which would have effected a forfeiture: as, for example, where the condition is, to reside for a certain time in every year on the entailed property, or to assume the name and arms of the person creating the settlement. The like observations are also applicable to conditions for avoiding the estate in case the tenant in tail should fail to pay a specified sum of money to some certain person at some particular time; or where the enjoyment of the estate is restricted to some uncertain event, as, so long as a particular tree should stand: (Fearn's Cont. Rem. 434, 7th edit.; Pig. Com. Rec. 176; 1 Mod. 111; *Page v. Hayward*, 2 Salk. 670; *Gulliver v. Schuckburgh Ashby*, 4 Bur. 1929; *Drier v. Edgar*, Cow. 379.) And it seems, that the same object may be now attained by an assurance under this act: (1 Hughes Pract. Sales, 149.)

Although the Fine and Recovery Substitution Act does not require any particular form of deed for barring an entail, it must, nevertheless, be a formal instrument, complete in all its parts, a court of equity having no power to relieve in case of defective or informal assurances. And every assurance by a tenant in tail (except a lease not exceeding twenty-one years at rack-rent, or not less than five-sixths of a rack-rent), will be inoperative, unless enrolled in the High Court of Chancery within six calendar months after the execution; but when so enrolled it will take effect from the time of the execution (sect. 41.) Still, for all this, a purchaser should lose no time in getting his deed enrolled, as a subsequent *bonâ fide* purchaser for valuable consideration would be entitled to priority, in case he should get his deed enrolled before the first purchaser. No proof of the deed is required at the time of enrolment; consequently, the certificate of enrolment is no proof of execution: (*Bishop v. De Burgh*, 6 L. T. 397.) In consequence of enrolment being necessary, it became the practice in all well-penned disentailing deeds, where a power of appointment was intended to be reserved, or uses were designed to arise out of the seisin of the party to whom the property was conveyed by the disentailing deed, to omit the words "bargain and sell," in order that the assurance might not operate as a bargain and sale enrolled, and thus vest the use in the grantee, and so convert the estates to arise out of his seisin into mere equitable estates.

Disentailing
assurance must
be a complete
instrument.

No. I.

Conveyance
by Grant and
Release by
Tenant in tail
for the purpose
of barring an
Estate tail and
taking a
reconveyance
to usual
dower uses, &c.

Habendum to
trustee to uses
to bar dower.

3. TO HAVE AND TO HOLD the said (*short general description*) and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*trustee*) and his heirs, freed and discharged from all estates tail of the said (*tenant in tail*) and all estates, rights, interests and powers to take effect, after, or in defeasance of such estates tail, (c) *To such uses*, upon such trusts, and for such ends, intents and purposes as the said (*tenant in tail*) shall from time to time, or at any time, by deed or deeds appoint; and in default of and until such appointment, and so far as any such appointment if incomplete shall not extend, TO THE USE of the said (*tenant in tail*) and his assigns, for and during the term of his natural life, without impeachment of waste, and from and immediately after the determination of that estate by any means in his lifetime, TO THE USE of the said (*trustee to uses*), his executors and administrators, during the life of the said (*tenant in tail*), IN TRUST for him and his assigns: and immediately after the determination of the said hereinbefore lastly limited estate, TO THE USE of the said (*tenant in tail*), his heirs and assigns for ever.

Declaration to
debar widow of
dower.

4. AND the said (*tenant in tail*) hereby declares that no woman becoming his widow shall be entitled to dower out of the said hereditaments and premises.

IN WITNESS, &c. (d)

(c) If the limitation is simply in fee, substitute for fee dower uses,—

“To the only proper use and behoof of the said (*tenant in tail*), his heirs and assigns for ever.”

Practical
suggestions.

(d) This deed must be enrolled in pursuance of the Fine and Recovery Substitution Act, within six calendar months after execution. As its object also is to clear the property from the incumbrance of the wife's right of dower, the deed must also be acknowledged in pursuance of the said act: (see observations upon the subject of acknowledgment, *ante*, p. 64, note (a); see also form of memorandum of acknowledgment, *ante*, No. VII., clause 1, p. 67.)

No. II.

CONSENT OF PROTECTOR, BY A DISTINCT DEED, ENABLING THE TENANT IN TAIL TO BAR HIS ESTATE TAIL AND THE REMAINDERS OVER. VARIATION WHERE THE ENTAIL WAS CREATED BY WILL.

- | | |
|---|---|
| 1. Recital of deed creating entail.
2. That tenant in tail is eldest son of protector. | 3. That protector will gives his consent to disentailing deed.
4. Testatum, protector consents to disposition by tenant in tail. |
|---|---|

TO ALL TO WHOM THESE PRESENTS SHALL COME, (*protector*), of, &c., sends greeting.

1. WHEREAS by indenture of lease and release, bearing Recital of deed creating entail. date respectively on or about the and days of in the year , the indenture of release being made between the said (*protector*) of the first part, (*mother, by maiden name*) of the second part, and (*trustees*) of the third part, (being a settlement made previously to and in contemplation of a marriage between the said (*protector*) and (*mother*), which was shortly afterwards duly had and solemnized), the hereditaments and premises therein described were limited, from and immediately after the solemnization of the said intended marriage, *To the use* of the said (*protector*) and his assigns for life, without impeachment of waste, with remainder *To the use* of the said (*trustees*) and their heirs during the life of the said (*protector*), *Upon trust* to preserve the contingent remainders thereafter limited, and after his decease *To the use* of the first and other sons of the said intended marriage successively, and in remainder one after another, in tail male general, with divers remainders over, with the ultimate re-

No. II. mainder, *To the use* of the said (*protector*), his heirs and assigns
for ever. (a)

*Consent of
Protector by a
distinct deed,
enabling the
Tenant in tail
to bar his Estate
tail and
the remainders
over.*

That tenant in
tail is eldest
of protector.

That protector
will give his
consent to dis-
entailing deed.

Testatum, pro-
tector consents
to disposition by
tenant in tail.

2. AND WHEREAS (*tenant in tail*) is the eldest son and heir
apparent of the said (*protector*.)

3. AND WHEREAS the said (*tenant in tail*) being desirous of
barring his estate tail in the said hereditaments and premises, and
all estates, rights, interests and powers to take effect after the
determination, or in defeasance of such estate tail, hath requested
the said (*protector*) to consent to his making a disposition for that
purpose.

4. NOW KNOW YE, that for effectuating the purposes aforesaid,

(a) Variation where the entail was created by will.

Recital of will
creating entail.

A. "WHEREAS (*testator*), late of _____, esquire, by his last will
and testament in writing, dated on or about the 12th day of April,
in the year 1800, and legally executed and attested as by law was
then required for passing real estates (amongst other devises and
bequests) devised ALL [HERE DESCRIBE *parcels*], with their
appurtenances, unto and to the use of the said (*protector*), for and
during the term of his natural life, with remainder *To the use* of
certain trustees in the now reciting will mentioned, and their
heirs, during the life of the said (*protector*), *Upon trust* to preserve
the contingent remainders thereafter limited, with remainder *To
the use* of the first and every other son of the said (*protector*)
successively, and in remainder one after another as they should
respectively be in seniority of age and priority of birth, with
divers remainders over, and with the ultimate remainder *To the
use* of the said (*protector*), his heirs and assigns for ever."

Of death of
testator.

B. "AND WHEREAS the said (*testator*) died on or about the 12th
day of June, in the year 1803, without having altered or revoked
his said will, which was duly proved by the executors therein named
in the Prerogative Court of the Archbishop of Canterbury, on the
15th day of November in the same year."

and in exercise of the power vested in him as such protector, in and by the said hereinbefore recited settlement, and of every other power enabling him thereunto, he the said (*protector*) doth by these presents consent to all and every disposition which the said (*tenant in tail*) shall from time to time or at any time hereafter make of the said hereditaments and premises comprised in such settlement, for and upon any use, trust, end, intent or purpose whatsoever.

No. II.

*Consent of
Protector by a
distinct deed
enabling the
Tenant in tail
to bar his Estate
tail and
the remainders
over.*

IN WITNESS, &c.

No. III.

CONVEYANCE BY A TENANT IN TAIL IN POSSESSION, BY GRANT AND RELEASE, TO A PURCHASER TO USUAL DOWER USES. VARIATION WHERE VENDOR'S WIFE CONCURS TO RELEASE HER DOWER.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of death of tenant for life, whereby an estate tail became vested in possession in tenant in tail. | <ol style="list-style-type: none"> 3. Of agreement to sell. 4. Testatum, by which tenant in tail conveys. 5. Habendum to purchaser in fee discharged of estates tail, &c. |
|--|--|

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*vendor, tenant in tail*) of, &c. (a) of the one part,
(*purchaser*) of, &c., of the other part. (b) [RECITE DEED *creating entail, ut ante*, No. II., clause 1, p. 333.]

Recital of death
of tenant for
life, whereby an
estate tail be-
came vested in
possession in
tenant in tail.

2. AND WHEREAS the said (*father*) died on or about the
day of , in the year , leaving the said (*tenant in tail*)
his eldest son and heir at law him surviving, who thereupon en-
tered on and became seised as tenant in tail of, amongst divers
other hereditaments and premises, the hereditaments and premises
hereinafter described, and which are intended to be hereby granted
and released.

(a) If the wife concurs, add

“ And (*Christian name*), his wife.”

(b) If the property is to be limited to uses to bar dower, the deed must be of three parts, the dower trustee being the party of the third part

3. AND WHEREAS the said (*tenant in tail*) has contracted to sell the said hereditaments and premises hereinafter described, and the fee-simple and inheritance thereof, free from all incumbrances, to the said (*purchaser*), for the sum of 2,700*l.* (c)

No. III.

Conveyance
by a Tenant in
tail in
possession, by
Grant and
Release to a
Purchaser to
usual dower
uses, &c.

4. NOW THIS INDENTURE WITNESSETH, that for the purpose of barring and destroying the estate tail of the said (*tenant in tail*) in the hereditaments and premises hereinafter described, and all estates, rights, titles, interests and powers to take effect after the determination, or in defeasance of such estate tail, and to limit the same to the uses and in manner hereinafter declared; and also in consideration of the sum of 2,700*l.* sterling this day paid by the said (*purchaser*) to the said (*tenant in tail*), the receipt of which the said (*tenant in tail*) hereby acknowledges, and therefrom doth acquit, release, exonerate, and for ever discharge, the said (*purchaser*), his heirs, executors, administrators and assigns, he the said (*tenant in tail*) DOTH by these presents grant, release and confirm (d) unto the said (*purchaser*) and his heirs, ALL [HERE DESCRIBE *parcels*]; and all rights, members and appurtenances to the said hereditaments and premises belonging or appertaining; and all the estate, right, title and interest, both legal and equitable, of him the said (*tenant in tail*) (e) therein.

Of agreement
to sell.

Testatum, by
which tenant in
tail conveya.

(c) If the wife is a concurring party, then add—

“And the said (*Christian name*), the wife of the said (*tenant in tail*), in order to enable him to carry his recited contract into effect, hath agreed to concur in these presents, for the purpose of releasing her right of dower in the said hereditaments and premises, in manner hereinafter appearing.”

Of agreement
of wife to release
her dower.

(d) If the wife is a concurring party, add—

“And for the purpose of releasing and extinguishing her right of dower in the said hereditaments and premises, she the said (*Christian name*), the wife of the said (*tenant in tail*), (and at his request, testified by his executing these presents), DOTH by these presents remise, release, and quit claim.”

(e) If the wife concurs, add—

“And (*Christian name*) his wife.”

No. III.

*Conveyance
by a Tenant in
tail in
possession, by
Grant and
Release, to a
Purchaser to
usual dower
uses, &c.*

*Habendum to
purchaser in fee,
discharged of
estates tail, &c.*

5. TO HAVE AND TO HOLD the said and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs [TO THE USE of the said purchaser, his heirs and assigns for ever], freed and discharged from all estates tail of the said (*tenant in tail*), and all estates, rights, titles, interests and powers, to take effect after the determination or in defeasance of such estates tail. (*f*) TO SUCH USES [HERE CONTINUE *dower uses, and clause debarring widow of dower, ut ante*, No. I., clauses 3 and 4, p. 332. INSERT *also usual covenants for title, ut ante*, Sect. I., No. I., clauses 8, 9, 10, pp. 48-50. ALSO *recital that title deeds relate to other property of tenant in tail, and covenant for their production, ut ib.* No. V., clauses 8, 9, pp. 61, 62.] (*g*) .

IN WITNESS, &c.

(*f*) If the property is to be limited to uses to bar dower, insert declaration of uses, *ut ante*, No. I., clauses 3 and 4, p. 332.

(*g*) If the wife concurs to release her dower, insert covenant from husband that she will acknowledge the deed, *ut ante*, No. VI., clause 7, p. 65. The memorandum of acknowledgment also, *ut ante*, No. VII., p. 67, must be endorsed on the deed.

No. IV.

CONVEYANCE BY A FATHER, TENANT FOR LIFE AND PROTECTOR OF A SETTLEMENT, AND HIS ELDEST SON, TENANT IN TAIL IN REMAINDER, FOR THE PURPOSE OF BARRING THE ENTAIL AND TAKING BACK AN ESTATE FOR LIFE TO THE FATHER, SUBJECT TO SUCH USES AS THE FATHER AND SON SHALL JOINTLY APPOINT, WITH THE ULTIMATE REMAINDER TO THE SON IN FEE.

1. Parties.
2. Testatum.

3. Habendum and declaration of uses.

1. THIS INDENTURE, made the day of A.D. 185 , Parties BETWEEN (*father, tenant for life*), of, &c., of the first part, (*sons tenant in tail*), eldest son and heir apparent of the said (*father*), of &c., of the second part, and (*trustee*) of, &c., of the third part. [RECITE marriage settlement creating the entail, and also that tenant in tail is eldest son of protector, *ut ante*, No II., clauses 1, 2, p, 333, 334.]

2. NOW THIS INDENTURE WITNESSETH, that for the purpose Testatum. of barring and destroying the estate tail of the said (*tenant in tail*) in the hereditaments and premises hereinafter described, and all estates, rights, interests and powers, to take effect after the determination, or in defeasance of such estates tail, and to limit the same to the uses hereinafter declared, the said (*father*) BOTH by these presents grant and convey, and the said (*tenant in tail*), (with the consent of the said (*father*), as protector of the said hereinbefore recited settlement, testified by his being a party hereto), BOTH by these presents grant, release and confirm unto the said (*trustee*) and his heirs, ALL, &c. [DESCRIBE parcels.] Together with all houses, outhouses, edifices, buildings, barns,

No. IV. stables, yards, gardens, orchards, commons, mines, minerals, metals, quarries, trees, woods, underwoods, and the ground and soil thereof, mounds, fences, ditches, ways, paths, passages, waters, watercourses, liberties, privileges, easements, profits, commodities, advantages, rights, members, and appurtenances whatsoever to the said hereditaments and premises belonging or appertaining, or usually held, occupied or enjoyed therewith. AND all the estate, right, title and interest, both legal and equitable, of them the said (*father*) and (*tenant in tail*) therein.

Conveyance by a Father and his Son, for barring the entail, and taking back an Estate for Life, &c.

General words.
All-estate clause.

Habendum and declaration of uses.

3. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the hereditaments and premises hereinbefore described and hereby granted and released, with their appurtenances, unto the said (*trustee*) and his heirs, freed and absolutely discharged from all estates tail of the said (*tenant in tail*), and all estates, rights, interests and powers to take effect after, or in defeasance of such estates tail; TO SUCH USES, upon such trusts, and for such ends, intents and purposes, and with, under and subject to such powers, provisoes, declarations and agreements as the said (*father*) and (*tenant in tail*) shall from time to time or at any time, by any deed or deeds, jointly appoint. AND in default of such appointment, and so far as any such appointment, if incomplete, shall not extend, TO THE USE of the said (*father*) and his assigns, for and during the term of his natural life, without impeachment of waste; and from and immediately after his decease, TO THE USE of the said (*tenant in tail*), his heirs and assigns for ever.

IN WITNESS, &c.

No. V.

CONVEYANCE BY TENANT IN TAIL WITHOUT THE CONSENT
OF THE PROTECTOR, WITH A COVENANT TO PERFECT THE
TITLE AT A FUTURE PERIOD.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of will creating the entail. 3. Recital of testator's death whereby protector became seised for life, with remainder to his first and other sons successively in tail. 4. That vendor is first tenant in tail expectant on protector's life estate. 5. Of contract to sell. 6. Testatum. | <ol style="list-style-type: none"> 7. Habendum, to purchaser in fee. 8. Covenants from tenant in tail that he is rightfully entitled to an estate tail in remainder, with remainders over. 9. That he has good right to convey. 10. For quiet enjoyment, &c. 11. Free from incumbrances. 12. For further assurance. 13. To perfect title at a future period. |
|--|---|

1. THIS INDENTURE, made the day of , A.D. 185 , Parties.
BETWEEN (*tenant in tail*), of, &c., of the one part, and (*purchaser*)
of, &c., of the other part.

2. WHEREAS (*testator*), late of, &c., esquire, deceased, by his Recital of will
last will in writing, bearing date on or about the day of , creating the
and executed and attested as by law required, gave and devised entail.
the hereditaments and premises hereinafter described to the use of
the said (*protector*), and his assigns, for the term of his natural life,
without impeachment of waste, with remainder to the use of his
first and other sons in tail male general, with divers remainders
over.

3. AND WHEREAS the said (*testator*) died on or about the Recital of
day of without having altered or revoked his said will (which testator's death
whereby protec-

No. V.
*Conveyance by
 Tenant in tail
 without the
 consent of the
 Protector, with a
 Covenant to
 perfect the Title.*

was duly proved by the executors therein named, in the Prerogative Court of the Archbishop of Canterbury, on the day of 185), whereby the said (*protector*) became seised of the said hereditaments and premises for life, with remainder to his first and other sons successively in tail male general, with the limitations over as aforesaid.

tor became
 seised for life,
 with remainder
 to his first and
 other sons
 successively
 in tail.

4. AND WHEREAS the said (*tenant in tail*) is the first son of the said (*protector*), and attained his full age of twenty-one years on the day of .

That vendor is
 first tenant in
 tail expectant
 on protector's
 life estate.

Of contract to
 sell.

5. AND WHEREAS the said (*tenant in tail*) has contracted with the said (*purchaser*) for the sale of the remainder in fee-simple, immediately expectant on the decease of the said (*protector*), in the said hereditaments and premises, free from incumbrances, at the price of 1,500*l.*, but the said (*tenant in tail*) being unable to obtain the consent of the said (*protector*), as such protector of the settlement under the said hereinbefore recited will, to the disposition of the said hereditaments and premises, the said (*purchaser*) has agreed to accept such a conveyance as the said (*tenant in tail*) is empowered now to make without such consent, upon his entering into the covenant hereinafter contained for perfecting the title of the said (*purchaser*) to the said hereditaments and premises, when enabled and competent so to do, in manner hereinafter appearing. (*b*)

Tenant in tail
 may bar his
 own estate tail
 and create a
 base fee without
 protector's
 consent.

(*b*) Although a tenant in tail cannot bar the remainders expectant on his estate tail without the consent of the protector, he may, nevertheless, by an assurance under the Fine and Recovery Substitution Act (3 & 4 Will. 4, c. 74), bar his own estate tail in the lands, thereby creating a base fee therein, determinable upon failure of issue of his body, producing in point of fact the same operation as a fine with proclamations would have done previously. And although such an assurance will only pass a base fee, still, where such base fee and the reversion in fee in the same lands become vested in the same person, and there shall be no determinable estate between the base fee and such remainder or reversion, then the base fee will be enlarged into as large an estate as the tenant in tail could have created with the consent of the protector (s. 39.)

Voidable estate
 may afterwards
 be confirmed by
 tenant in tail.

AND even where such union between the base fee and such remainder or reversion is prevented by intermediate remainders, such voidable estate may afterwards be confirmed by a tenant in tail, whenever there ceases to be a protector of the settlement, or, if the protector can be prevailed upon to give his consent during the continuance of such protectorship (s. 38.) In case, therefore, a tenant in tail under a protected settlement is desirous either of selling or effecting a mortgage upon the entailed property, and is unable to procure the

6. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of 1,500*l.* sterling, paid by the said (*purchaser*) to the said (*tenant in tail*) on the execution hereof, the receipt of which the said (*tenant in tail*) hereby acknowledges, and therefrom doth by these presents release the said (*purchaser*), his heirs, executors, administrators and assigns for ever, HE the said (*tenant in tail*), for the purpose as well of defeating and destroying his estate tail in the said hereditaments and premises, as to pass a base fee in remainder, immediately expectant on the decease of the said (*protector*), BOTH by these presents grant, release and confirm unto the said (*purchaser*) and his heirs, ALL, &c. AND all rights, members and appurtenances to the said premises belonging; and all the estate, right, title, and interest, both legal and equitable, of him the said (*tenant in tail*) therein.

No. V.

Conveyance by
Tenant in tail
without the
consent of the
Protector, with a
Covenant to
perfect the Title.

Testatum.

7. TO HAVE AND TO HOLD the said (*short general description*) and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs, TO THE USE of the said (*purchaser*), his heirs and assigns for ever, freed and absolutely discharged of the estate tail of the said (*tenant in tail*), but subject to the estate for life of the said (*protector*), and to such estates, rights, titles, interests and powers, as by the said hereinbefore recited will are limited, to take effect after the determination of or in defeasance of the estate tail of the said (*tenant in tail*.)

Habendum to
purchaser in fee.

8. AND the said (*tenant in tail*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*) and his heirs, that (notwithstanding any act or thing done or permitted by the said (*tenant in tail*), or any person rightfully claiming through or under him, or the said (*testator*), deceased, to the contrary), he the said (*tenant in tail*) is now rightfully entitled

Covenant from
tenant in tail
that he is right-
fully entitled to
an estate tail in
remainder, with
remainders over.

consent of the protector, he may still bar his own estate by an assurance under the act thus creating a base fee, which he may afterwards enlarge into a fee-simple absolute, whenever there ceases to be protector to the settlement: (1 Hughes Pract. Mort. 165.)

No. V.

Conveyance by
Tenant in tail
without the
consent of the
Protector, with a
Covenant to
perfect the Title.

That he has
good right to
convey.

to the said hereditaments and premises hereby granted and released, with their appurtenances, for an estate of inheritance in remainder, expectant as aforesaid, with such remainders over as aforesaid.

9. AND ALSO that he the said (*tenant in tail*) now hath in himself good right by these presents to grant and release the said hereditaments and premises unto and to the use of the said (*purchaser*), his heirs and assigns, in manner aforesaid.

For quiet
enjoyment.

10. AND ALSO that the same hereditaments and premises shall be peaceably and quietly held and enjoyed accordingly, without let, suit, eviction, interruption or denial by the said (*purchaser*), or any other person or persons rightfully claiming through or under him, or the said (*testator*), deceased, except as appears by these presents.

Free from
incumbrances.

11. AND that freely, clearly and absolutely exonerated and indemnified by the said (*tenant in tail*), his heirs, executors or administrators, from all former and other estates, rights, titles, liens, charges and incumbrances, made, created or suffered by the said (*tenant in tail*), or any other person or persons whomsoever, rightfully claiming through or under him or the said (*testator*), deceased, except as appears by these presents.

For further
assurance.

12. AND FURTHER, that the said (*tenant in tail*) and all persons rightfully claiming any estate or interest, legal or equitable, in the said hereditaments and premises, through or under him or the said (*testator*), deceased (except the said (*protector*) and claimants in respect of the estate, rights, titles, interests and powers, to take effect after the determination, or in defeasance of the estate tail of the said (*tenant in tail*), and subject to which the said hereditaments and premises are so granted and released as aforesaid), will from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his heirs or assigns, enter into, execute and perfect all such further acts, deeds, conveyances and assurances whatsoever, for the further, better, or more perfectly, or satisfactorily granting, assuring and confirming the said hereditaments and premises unto and to the use of the said (*purchaser*),

his heirs and assigns, according to the true intent and meaning of these presents, as the said (*purchaser*), his heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

No. V.

*Conveyance by
Tenant in tail
without the
consent of the
Protector, with a
Covenant to
perfect the Title.*

13. AND MOREOVER that the said (*tenant in tail*), or his issue in tail, when competent or enabled so to do, will, at the request of the said (*purchaser*), but at the costs of the said (*tenant in tail*), his executors or administrators, enter into, execute and perfect all such acts, deeds, conveyances and assurances, for effectually barring, defeating and destroying all estates, rights, titles, interests and powers, to take effect after the determination, or in defeasance of, the estate tail of the said (*tenant in tail*), and for perfecting and confirming the title of the said (*purchaser*), his heirs and assigns, to the said hereditaments and premises, as the said (*purchaser*), his heirs or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

*To perfect title
at a future
period.*

IN WITNESS, &c.

No. VI.

FURTHER ASSURANCE IN PURSUANCE OF THE COVENANT
CONTAINED IN THE LAST PRECEDENT.

- | | |
|--|--|
| 1. Parties.
2. Recital of conveyance of base fee
by tenant in tail.
3. Recital of death of protector.
4. Of consent of tenant in tail to
perfect assurance. | 5. Testatum, by which tenant in tail
perfects title.
6. Habendum to purchaser, discharged
of all estates tail.
7. Covenant from tenant in tail that
he has done no act to incumber. |
|--|--|
-

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*tenant in tail in last conveyance*) of, &c., of the one part,
and (*purchaser*) of, &c., of the other part.

Recital of con-
veyance of base
fee by tenant in
tail.

2. WHEREAS by indenture dated on or about the day
of 18 , made between the said (*tenant in tail*) of the one
part, and the said (*purchaser*) of the other part, and enrolled in
the High Court of Chancery on the day of in the same
year; *After reciting* that (*protector*) of, &c., was tenant for life of
the hereditaments and premises therein and hereinafter described,
and intended to be hereby confirmed, and that the said (*tenant in
tail*) was tenant in tail in remainder, immediately expectant on such
life estate, with divers remainders over; *And also reciting* that the
said (*tenant in tail*) had contracted to sell his said remainder in fee
simple, immediately expectant on the decease of the said (*pro-
tector*), to the said (*purchaser*), for the sum of 1,500*l.*, and that
the said (*tenant in tail*) being then unable to obtain the consent of
the said (*protector*) to the conveyance, the said (*purchaser*) had
agreed to accept a conveyance thereof from the said (*tenant in tail*)
without such consent, on his entering into a covenant that he or

his issue in tail would perfect the title of the said (*purchaser*) in manner thereafter appearing; IT IS WITNESSED, that in pursuance of the said agreement, and in consideration of 1,500*l.* then paid by the said (*purchaser*) to the said (*tenant in tail*), the said (*tenant in tail*), for the purpose of defeating and destroying his estate tail in the said hereditaments and premises, and to pass a base fee in remainder, immediately expectant on the decease of the said (*protector*), did grant, release and confirm unto the said (*purchaser*) and his heirs, ALI., &c. [DESCRIBE *parcels*], with their appurtenances; To hold the same, with their appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns for ever, subject to the estate for life of the said (*protector*), and the estates, rights, titles, interests and powers to take effect after the determination, or in defeasance of the estate tail of the said (*tenant in tail*.) AND by the now reciting indenture, the said (*tenant in tail*) did thereby covenant with the said (*purchaser*), that he the said (*tenant in tail*), or his issue in tail, would, when enabled or competent to do so, at the request of the said (*purchaser*), his heirs or assigns, but at the costs of the said (*tenant in tail*), his executors or administrators, execute all such assurances for effectually barring all estates, rights, titles, interests and powers to take effect after the determination, or in defeasance of the estate tail of the said (*tenant in tail*), and for perfecting the title of the said (*purchaser*), his heirs and assigns, to the inheritance in fee simple of the same hereditaments and premises.

No. VI.
 Further
 assurance in
 pursuance of the
 Covenant
 contained in the
 last precedent.

3. AND WHEREAS the said (*protector*) died on or about the day of .

Of death of
 protector.

4. AND WHEREAS the said (*purchaser*) hath requested the said (*tenant in tail*) to perfect his title to the said hereditaments and premises, in pursuance of the said hereinbefore recited covenant, by executing this present assurance, in manner hereinafter appearing, which the said (*tenant in tail*) hath consented to do.

Of consent of
 tenant in tail to
 perfect
 assurance.

5. NOW THIS INDENTURE WITNESSETH, that in performance of the said hereinbefore recited covenant, and in consideration of the sum of five shillings sterling this day paid by the said (*purchaser*) to the said (*tenant in tail*), the receipt whereof is hereby

Testatum, by
 which tenant in
 tail perfects
 assurance.

No. VI.

Further
assurance in
pursuance of the
Covenant
contained in the
last precedent.

acknowledged; and for the purpose of barring, defeating and destroying all estates, rights, titles, interests and powers to take effect after the determination of the base fee into which the said estate tail of the said (*tenant in tail*) was converted by the said hereinbefore recited indenture, and for the purpose of perfecting, assuring and confirming the title of the said (*purchaser*) to the inheritance in fee simple in possession of the aforesaid hereditaments and premises, the said (*tenant in tail*) DOth by these presents grant, release, and confirm unto the said (*purchaser*), and his heirs, ALL and singular the aforesaid hereditaments and premises hereinbefore described and so as aforesaid comprised in and granted by the said hereinbefore recited indenture of the day of and all the estate, right, title and interest, both legal and equitable, of him the said (*tenant in tail*) therein. TOGETHER with all the deeds, evidences and writings relating to the title of the said hereditaments and premises in the custody or power of the said (*tenant in tail*), or which he can procure without suit.

Habendum to
purchaser, dis-
charged of all
estates tail.

6. TO HAVE AND TO HOLD the said (*short general description*) and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and confirmed, with their appurtenances, unto the said (*purchaser*) and his heirs; TO THE USE of the said (*purchaser*), his heirs and assigns for ever; freed and absolutely discharged of and from all estates, rights, titles, interests and powers to take effect after the determination or in defeasance of the estate tail of the said (*tenant in tail*), or base fee, into which the same was so converted as aforesaid.

Covenant from
tenant in tail
that he has
done no act to
incumber.

7. AND the said (*tenant in tail*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*) and his heirs, that he the said (*tenant in tail*) hath not done or permitted, or willingly or knowingly suffered, or been party or privy to any act, deed, matter or thing whatsoever, whereby, or by reason or means whereof the said hereditaments and premises hereby granted and confirmed, or any part of the same, can be incumbered, or prejudicially affected in any manner whatsoever.

IN WITNESS, &c.

No. VII.

SURRENDER OF COPYHOLDS OUT OF COURT FOR THE
PURPOSE OF BARRING AN ESTATE TAIL. VARIATION
WHERE THE PROTECTOR CONSENTS. (a)

Manor of B. } BE IT REMEMBERED, that on
in the } the day of (*vendor*), of, &c.,
County of SOUTHAMPTON. } one of the customary tenants of
the said manor, came before (*steward*), esquire, steward of the said
manor, and in consideration of the sum of 3,565*l.* sterling, then
paid to the said (*vendor*) by (*purchaser*), of, &c., surrendered out
of court (*b*) into the hands of the lord of the said manor, by the

(a) By sect. 50 of the act 3 & 4 Will. 4, c. 74, the preceding clauses of that act are applied to copyholds, except that dispositions of legal estates are to be made by surrender, and of equitable estates either by surrender or by deed. As to copyholds.

(b) If made with the consent of the protector, add—

“With the consent of (*protector*), of, &c., the protector of the settlement under which the said (*vendor*) is entitled to an estate tail in the said premises.”

If the protector does not consent by deed, the consent is to be given by the person taking the surrender; and if the surrender be made out of court, the consent is to be stated in the memorandum of the surrender, and the memorandum signed by the protector and the lord, or his steward, to enter the memorandum on the rolls, and the memorandum on the court rolls and *the copy of such entry* is to be evidence of the consent and surrender; but if the surrender be in court, the lord or steward is to enter the consent on the rolls, with the statement of the consent, and such entry, or a copy, will be as available for the purposes of evidence as any other entry on the court rolls or a copy thereof (s. 52.)

A further memorandum, testifying such entry, should be endorsed on the deed as follows:—

“MEMORANDUM, that on the day of and previously Form of memorandum to be endorsed on deed.
to the surrender of the within-mentioned copyhold hereditaments,
made to the within-named (*vendor*), on the same day, into the

No. VII.

*Surrender
of Copyholds out
of Court
for the purpose
of barring
an Estate tail.
Variation where
the Protector
consents.*

hands and acceptance of the steward by the rod, according to the custom of the said manor, ALL [HERE DESCRIBE *parcels*, and *general words*], to all which said copyhold hereditaments and premises the said (*vendor*) was admitted tenant at a general court holden in and for the said manor, on the day of To HOLD to him and the heirs of his body, according to the limitations contained in a certain deed of settlement therein mentioned or referred to. AND all the estate, right, title and interest, property, claim and demand whatsoever, both legal and equitable, of him the said (*vendor*), of, in, to, out of, or upon the said hereditaments and premises, TO THE USE of the said (*purchaser*), his heirs and assigns for ever. TO HOLD by copy of court roll, at the will of the lord, according to the custom of the said manor, at the rents. heriots, duties, suits, and services to be paid and performed to the lord of the said manor, for or in respect of the said hereditaments and premises, and of right accustomed.

TAKEN and accepted the day and } R. S.,
year first above written, by me, } Steward of the said Manor.

hands of the lord of the said manor of ———, by the hands and acceptance of me (A. B.), steward of the said manor, the within-written instrument or deed poll was produced to me, as I hereby do acknowledge."

"A. B."

Where the protector consents by deed.

If the protector consents by deed, then add—

"Given by a certain deed poll under the hand and seal of the said (*protector*), dated the day of ."

* If the protector of a settlement of copyholds consents by deed, the deed must be produced to the lord or his steward, at or before the surrender, and the lord or steward is to acknowledge such production by endorsement on the deed, and enter the deed and endorsement on the rolls, and the endorsement is to be evidence of the production, and the lord or steward is to endorse a memorandum of such entry (s. 51.)

A similar form of deed may be employed in case of a protector consenting to a disposition of copyholds, as where a similar consent is given with respect to freehold estates, *ut ante*.

No. VIII.

FORM OF SURRENDER WHEN MADE IN COURT.

Manor of B. } A GENERAL CUSTOMARY Form of sur-
 in the } COURT of (*lord*), lord of this render out of
 County of SOUTHAMPTON. } manor, holden in and for the said court.
 manor on the day of before (*steward*), esquire, steward
 of this manor, came (*vendor*), of, &c., one of the customary tenants
 of the said manor, and then and there, in consideration of the sum
 of 3,565*l.* sterling paid to him the said (*vendor*), by (*purchaser*), of,
 &c., in open court surrendered into the hands of the lord of this
 manor, by the hands and acceptance of the said steward by the
 rod, according to the custom of the said manor, ALL, &c. [HERE
 DESCRIBE, *parcels, and continue as in last precedent.*]

No. IX.

CONVEYANCE BY AN-EQUITABLE TENANT IN TAIL OF COPYHOLDS, WHO IS ALSO SEISED OF THE LEGAL FEE, TO A PURCHASER. (a)

- | | |
|--|--|
| 1. Parties.
2. Recital of deed of settlement creating the entail.
3. That no surrender was ever made in pursuance of the covenant contained in the deed of settlement.
4. Of death of father of tenant in tail. | 5. Of contract to sell.
6. Testatum, by which vendor conveys to the purchaser for the purpose of barring the entail.
7. Habendum to purchaser discharged of all estates tail.
8. Further testatum, by which vendor covenants to surrender to purchaser's use, &c. |
|--|--|
-

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
 BETWEEN (*vendor*), of, &c., of the one part, and (*purchaser*), of,
 &c., of the other part.

Recital of deed
 of settlement
 creating the
 entail.

2. WHEREAS by indenture dated on or about the day of
 in the year 18 , and made between (*father of vendor*), of
 the first part, (*vendor's mother*) of the second part, and (*trustees*) of
 the third part, being a settlement made previously to and in con-
 templation of a marriage between the said (*father*) and (*mother*),

How an equita-
 ble estate tail
 in copyholds
 may be barred.

(a) An equitable tenant in tail of copyholds is empowered, by statute 3 & 4 Will. 4, c. 74, to dispose of them under the act, by deed, to be entered on the court rolls. If the protector consent by a separate deed, it must be executed previously to, or simultaneously with, the disposition, and is to be entered on the court rolls. Such entries are imperative on the lord, or his steward, who is to endorse on such deeds a memorandum of them; and unless this be done the deed of disposition will be void against subsequent purchasers (s. 53.) But in no case where any disposition is made of copyholds under this act, will it be necessary that the deed should be enrolled in Chancery (s. 54.)

and which was shortly afterwards duly had and solemnized, the said (*father*) being seised in fee of the copyhold or customary hereditaments and premises hereinafter described, in consideration of the said intended marriage, covenanted with the said (*trustees*), and their heirs, to surrender the same copyhold or customary hereditaments and premises, with their appurtenances, into the hands of the lord of the manor of B., to the following uses (that is to say), *To the use* of the said (*father*), for and during the term of his natural life, and after his decease, *To the use* of his first and other sons of the said intended marriage, severally and successively and in remainder one after another, as they should be in seniority of age and priority of birth, in tale male general; with divers remainders over.

No. IX.

Conveyance by an equitable Tenant in tail of Copyholds, who is also seised of the legal fee, to a Purchaser.

3. AND WHEREAS the said (*father*) never made any surrender of the said copyhold hereditaments and premises to the uses mentioned in the said hereinbefore recited deed, in pursuance of his said covenant therein contained. (*b*)

That no surrender was ever made in pursuance of the covenant contained in the deed of settlement.

4. AND WHEREAS the said (*father*) died on or about the day of in the year 18 , leaving the said (*vendor*), his eldest son and customary heir, him surviving.

Of death of father of tenant in tail.

5. AND WHEREAS the said (*vendor*) has contracted to sell the said copyhold hereditaments and premises for an unincumbered estate of inheritance in fee-simple in possession, according to the custom of the said manor, to the said (*purchaser*), for the sum of 4,350*l*.

Of contract to sell.

6. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited contract, and in consideration of the sum of 4,350*l*. sterling paid by the said (*purchaser*) to the said (*vendor*), on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth acquit, release, and for ever

Testatum, by which vendor conveys to the purchaser for the purpose of barring the entail.

(*b*) No surrender having ever been made in pursuance of the covenant contained in the marriage settlement, the legal estate remained in the settlor, and upon his decease descended upon the present vendor as his customary heir, who must surrender to the purchaser accordingly, and who must enter into a covenant to that effect in the present assurance. Practical observations.

No. IX. discharge the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*) DOTH by these presents grant and release unto the said (*purchaser*) and his heirs, ALL, &c., [HERE DESCRIBE *parcels*], AND all rights, members and appurtenances to the said premises belonging, or usually held, occupied or enjoyed therewith; AND all the estate, right, title and interest, both legal and equitable, of him the said (*vendor*) therein.

Conveyance by an equitable Tenant in tail of Copyholds, who is also seised of the legal fee, to a Purchaser.

Habendum to purchaser discharged of all estates tail. 7. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereinbefore described and hereby granted and released, with their appurtenances, unto the said (*purchaser*) and his heirs, *To the use of the said (purchaser)*, his heirs and assigns for ever (freed and absolutely discharged of and from all estates tail of the said (*vendor*), and all estates, rights, titles, interests and powers to take effect after the determination or in defeasance of the same estates tail.)

Further testamentum, by which vendor covenants to surrender to purchaser's use, &c. 8. AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said recited contract, and for the considerations aforesaid, HE the said (*vendor*) DOTH hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, [HERE CONTINUE *covenant to surrender copyholds to purchaser's use, and in the meantime to stand possessed thereof in trust for him; also, that vendor has good right to surrender; for quiet enjoyment; freedom from incumbrances, and for further assurance, ut ante, Section III., No. I., clauses 4 to 7 inclusive, pp. 304, 305.*

IN WITNESS, &c.

No. X.

DEED OF CONFIRMATION BY WAY OF FURTHER ASSURANCE BY HUSBAND AND WIFE OF LANDS PREVIOUSLY CONVEYED BY THEM TO A PURCHASER, AND OF WHICH A FINE WAS COVENANTED TO BE LEVIED, BUT NOT HAVING BEEN LEVIED ACCORDINGLY, THE PRESENT DEED IS TO BE ACKNOWLEDGED TO SUPPLY THAT OMISSION.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of conveyance to purchaser, and of covenant to levy fine. 3. That no fine was ever levied in pursuance of the covenant. 4. Of act abolishing fines and substituting more simple modes of assurance. | <ol style="list-style-type: none"> 5. Of agreement to perfect assurance, and to acknowledge deed. 6. Testatum. 7. Habendum to the same uses as are limited by the recited deed of conveyance to the purchaser. |
|---|---|

1. THIS INDENTURE, made the day of A. D. 185 , Parties.
BETWEEN (*vendor*), of, &c., and (*Christian name*) his wife, of the
one part, and (*purchaser*) of, &c., of the other part.

2. WHEREAS by indentures of lease and release, bearing date respectively the 14th and 15th days of October, in the year 1829, the indenture of release being made between the said (*vendor*) and (*Christian name*) his wife, of the first part, the said (*purchaser*) of the second part, and the (*purchaser's dower trustee*) of the third part, the hereditaments and premises hereinafter described were conveyed and assured, and now stand limited, TO SUCH USES, upon such trusts, and for such ends, intents and purposes as the said (*purchaser*) should, from time to time or any time, by any deed or deeds appoint; and in default of such appointment, TO THE USE

Recital of
conveyance to
purchaser, and
of covenant to
levy fine.

No. X. of the said (*purchaser*) and his assigns during the term of his natural
Deed of Confirmation by means of further Assurance by Husband and Wife, &c. life, without impeachment of waste, with a limitation TO THE USE of the said (*dower trustee*), his executors and administrators, during the life of the said (*purchaser*), IN TRUST for the said (*purchaser*) and his assigns, with the ultimate limitation TO THE USE of the said (*purchaser*), his heirs and assigns for ever : AND the now reciting indenture also contains a covenant from the said (*vendor*), that he and the said (*Christian name*) his wife, would, as of Michaelmas Term then next, levy unto the said (*purchaser*) and his heirs, in the Court of Common Pleas at Westminster, one or more fine or fines, *sur cognizance de droit come ceo*, &c., of the said hereditaments and premises ; which said fine or fines it was thereby declared should enure to the uses limited by the now reciting indenture.

That no fine was ever levied in pursuance of the covenant.

3. AND WHEREAS no fine was ever levied in pursuance of the covenant contained in that behalf in the said hereinbefore recited indenture.

Of act abolishing fines and substituting more simple modes of assurance.

4. AND WHEREAS by an act made and passed in the third and fourth years of the reign of His late Majesty King William the Fourth, all fines were abolished, and more simple modes of assurance substituted in lieu thereof.

Of agreement to perfect assurance, and to acknowledge deed.

5. AND WHEREAS the said (*purchaser*) hath requested the said (*vendor*) and (*Christian name*) his wife to perfect the title of the said (*purchaser*) to the said hereditaments and premises, by executing such substituted mode of assurance in lieu of the fine so covenanted to be levied for that purpose as aforesaid, which the said (*vendor*) and (*Christian name*) his wife have agreed to do.

Testatum.

6. NOW THIS INDENTURE WITNESSETH, that for the purposes hereinbefore expressed, and in consideration of the sum of five shillings, paid by the said (*purchaser*) to the said (*vendor*) and (*Christian name*) his wife on the execution hereof, the receipt of which is hereby acknowledged, THEY the said (*vendor*) and (*Christian name*) his wife, DO by these presents (which are intended to be duly acknowledged by the said (*Christian and surname of wife*) in pursuance of the said recited act) grant, release, convey, ratify and confirm unto the said (*purchaser*) and his heirs, ALL, &c.

[DESCRIBE *parcels* : INSERT *general words*, and *all-estate clause*, *ut ante*, Section I., No. I., clause 5, p. 45.]

No. X.

*Deed of
Confirmation by
means of
further
Assurance by
Husband
and Wife, &c.*

7. TO HAVE AND TO HOLD the said (*short general description*) and all and singular other the premises hereinbefore described, and hereby granted and released, with the appurtenances, unto the said (*purchaser*) and his heirs, TO SUCH AND THE SAME USES, upon such and the same trusts, and for such and the same ends, intents and purposes, as are limited and declared of and concerning the said hereditaments and premises, in and by the said hereinbefore recited indenture of release; and to, for and upon no other use, trust, end, intent or purpose whatsoever. [ADD *covenant from vendor that deed shall be acknowledged, ut ante*, Section I., No. VI., clause 7, p. 66. *The Memorandum and Certificate of Acknowledgment ut ante*, Section I., No. VII., clauses 1 and 2, pp. 67 and 68, *must be also indorsed upon the deed.*]

*Habendum to
the same uses
as are limited
by the recited
deed of
conveyance to
purchaser.*

IN WITNESS, &c.

No. XI.

AFFIDAVIT OF ACKNOWLEDGMENT BEFORE PERPETUAL COMMISSIONERS, WHERE A THIRD PERSON, A PRACTISING ATTORNEY DEPOSES TO ALL THE FACTS.(a) VARIATION WHERE PART OF THE CONSIDERATION IS PAID TO THE WIFE, OR A PROVISION HAS BEEN MADE FOR HER BY DEED.

(Attorney) of, &c., in the county of, &c., one of the attorneys of Her Majesty's Court of Common Pleas, maketh oath and saith, that he knows (*Christian name*) the wife of (*husband*) in the certificate hereunto annexed mentioned, and that the acknowledgment therein mentioned was made by the said (*Christian name of wife*) and the certificate signed by (*names of commissioners*), both of P., in the county of D., gentlemen, (a) the commissioners in the said

Practical
remarks.

(a) The Fine and Recovery Substitution Act (3 & 4 Will. 4, c. 74), requires that a certificate of acknowledgment, together with an affidavit of some person verifying the same, and the signature thereof, shall be lodged with the officer of the Court of Common Pleas appointed for the purpose, who is to see that the certificate is duly signed, and duly verified by affidavit, and is correct in other respects; and if it is, he is to cause the certificate and affidavit to be filed of record in the Court of Common Pleas: (sect. 85.)

Whenever an acknowledgment of a married woman is taken before Perpetual Commissioners, care must be taken that this is done before the commissioners within their particular district, for although the power conferred by the act (3 & 4 Will. 4, c. 74), to the Judges of the Superior Courts and of the Masters in Chancery, is not confined within any particular limit, so that they may receive acknowledgments wherever they may be; it is otherwise with regard to Perpetual Commissioners, who have no authority to take any acknowledgment out of the bounds of that county or district for which they are appointed: (Gray's Pract. 298, 2nd edit.)

Where, by reason of ill health, residence out of England, or any other sufficient cause, a married woman is prevented from making the acknowledgment before a Judge or Master in Chancery, or any of the Perpetual Commissioners, the Court of Common Pleas, at Westminster, or any judge of the court, is authorized to issue a commission specially appointing any persons therein named to be commissioners to take the acknowledgment; and the commission is to be made returnable within such time as shall be expressed in it, as the

certificate mentioned, on the day and year therein mentioned, at P. aforesaid, on the day and year therein mentioned, in the presence of this deponent, and that at the time of making such acknowledg-

No. XI.

*Affidavit of
Acknowledgment before
Perpetual
Commissioners,
&c.*

court or judge shall think fit: (3 & 4 Will. 4, c. 74, s. 83.) See the form of the affidavit to obtain such commission, *infra*, No. XIII.

The Court of Common Pleas is also directed by the above mentioned act from time to time to make such orders as it shall think fit, touching the mode of examination to be pursued by the commissioners appointed under this act, and touching the particular matters to be mentioned in the memorandums and certificates, and the affidavits verifying the certificates, and the time within which any of the proceedings shall take place: (sect. 89.) In pursuance of which direction the Court of Common Pleas, in Hilary Term, 1834, after revoking certain rules made in the previous Term, made the rules following:

1. "It is ordered that where any acknowledgment shall be made by any married woman, under or by virtue of the said act, before commissioners appointed under the said act, one at least of the commissioners shall be a person who is not in any way interested in the transaction giving occasion for such acknowledgment, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent so interested or concerned.

2. "And it is further ordered, that before the commissioners shall receive such acknowledgment, they, or in case one of them shall be interested or concerned as aforesaid, then such one of them as shall not be interested or concerned, do inquire of every married woman, separately and apart from her husband, and from the attorney and solicitor concerned in the transaction, whether she intends to give up her interest in the estate to be passed by such deed, without having any provision made in lieu of, or in return for her so giving up such interest; and where such married woman, in answer to such inquiry, shall declare that she intends to give up such her interest without any provision, and the said commissioners shall have no reason to doubt the truth of such declaration, and shall verily believe the same to be true, then they shall proceed to receive the said acknowledgment; but if it shall appear to them or such one of them as aforesaid, that it is intended that provision is to be made for any such married woman, then the commissioners shall not take her acknowledgment until they are satisfied that such provision has been actually made by some deed or writing produced to them; or if such provision shall not have been actually made before, then the commissioners shall require the terms of such intended provision to be shortly reduced into writing, and shall verify the same by their signatures in the margin, at the foot or back thereof.

3. "And it is hereby further ordered that the affidavit verifying the certificate to be made pursuant to the said act, and which certificate shall be in the form contained in the said act, shall (except in such case where the acknowledgment shall be taken elsewhere than in England, Wales, or Berwick-upon-Tweed), be made by some practising attorney or solicitor of one of the Courts of Westminster, or of one of the counties palatine of Lancaster or Durham, and that in all cases it shall be deposed in addition to the verification of the said certificate, that the deponent (or if more than one person join in the affidavit, that one or more of the deponents) knew the person or persons making such acknowledgment; and that at the time of making such acknowledgment, the person or persons making the same was or were of full age and competent understanding; and that one at least of the commissioners taking such acknowledgment, to the best of their deponent's knowledge and belief, is not in any manner interested in the transaction, giving occasion for the taking of such acknowledgment, or concerned therein as solicitor, attorney, or agent, or as clerk to any attorney, solicitor, or agent so interested or concerned; and that the names or residences of the said commissioners, and also the place or places where such acknowledgment or acknowledgments shall be taken shall be set forth in such affidavit; and that previously to such acknowledgment being taken the deponent

No. XI.

*Affidavit of
Acknowledg-
ment before
Perpetual
Commissioners,
&c.*

ment, the said (*Christian name of wife*) was of full age, and competent understanding, and knew that the said acknowledgment was intended to pass her estate in the premises in respect of which such acknowledgment was made. AND this deponent further saith, that to the best of this deponent's knowledge and belief (*one of commissioners*), is not in any manner interested in the transaction giving occasion for the taking of such acknowledgment, or concerned therein as attorney, solicitor, agent, or as clerk to any attorney, solicitor, or agent so interested or concerned. AND this deponent further saith, that previous to the said (*Christian name of wife*) making such acknowledgments, he this deponent inquired of her whether she intended to give up her interest in the estate intended to be passed by such deed, and in respect of which such acknowledgment was taken, without having any provision made for or in lieu of or in return for or in consequence of her so giving up such interest in such estate; and that in answer to such inquiry the said (*wife*) [(b) declared that she did intend to give up her interest in the said estate without having any provision made in lieu of or

had inquired of such married woman (or if more than one, of each of such married women), whether she intended to give up her interest in the estate to be passed, and also the answer given thereto; and where any such married woman, in answer to such inquiry, shall declare that she intends to give up her interest without any provision, this deponent shall state that he has no reason to doubt the truth of such declaration, and he verily believes the same to be true. And where any provision has been agreed to be made the deponent shall state that the same has been made by deed or writing, or if not actually made before, that the terms of the intended provision have been reduced into writing, which deed or writing he verily believes has been produced to the said judge, master, or commissioners.

4. "And it is hereby further ordered, that the affidavit shall state the parish or several parishes, or place or several places, and the county or counties in which the several premises wherein any such married woman shall appear to be interested shall by deed be described to be situate.

5. "And it is further ordered, that the affidavit shall be in the form hereunto annexed, subject to such variations as the circumstances of the case shall render necessary, or such affidavit may be made where it is found convenient, by one of the said commissioners, with such variation in the form thereof as shall be necessary in that behalf.

6. "And it is hereby further ordered that the certificates and affidavits verifying the same shall, within one month after making the acknowledgment, be delivered to the proper officer appointed under the said act; and that the officer shall not, after that time, receive the same without the direction of the court or a judge."

(b) A question having arisen as to the validity of acknowledgments taken where one of the commissioners was solicitor for one of the parties, notwithstanding the order of the Common Pleas recognising such practice, an act was passed last session to make valid all previous acknowledgments so taken, and en-

in return for or in consequence of her so giving up her interest, of which declaration of the said wife this deponent has no reason to

No. XI.

*Affidavit of
Acknowledg-
ment before
Perpetual
Commissioners,
&c.*

powering the Common Pleas to make rules for their future regulation. This statute is as follows :—

An Act to remove Doubts concerning the due Acknowledgment of Deeds by Married Women in certain Cases.—[7th August, 1854.] 17 & 18 Vict. c. 75.

Whereas by the act passed in the session of Parliament holden in the third and fourth years of King William the Fourth, chapter seventy-four, "for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance," it is provided that every deed to be executed by a married woman for any of the purposes thereof, except such as may be executed by her in the character of protector for the sole purpose of giving her consent to the disposition of a tenant in tail, shall, upon her executing the same or afterwards, be produced and acknowledged by her as her act and deed before a judge of one of the Superior Courts at Westminster, or a Master in Chancery, or before two of the Perpetual Commissioners or two Special Commissioners to be respectively appointed as therein provided, and a certificate of the taking of such acknowledgment is thereby directed to be lodged with some officer of the Court of Common Pleas at Westminster, who is directed, after satisfying himself that the requisitions of the said act have been complied with in manner therein mentioned, to cause the said certificate to be filed of record in the said Court of Common Pleas: and whereas it is apprehended that deeds executed by married women under the provisions of the said act may be liable to be invalidated by the circumstance that the judge, or Master in Chancery, or one or both of the commissioners, taking the acknowledgment, may be or may have been interested or concerned, either as a party or otherwise, in the transaction giving occasion for such acknowledgment, and it is not expedient that deeds executed in good faith under such circumstances should be invalidated: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 1. No deed which has been acknowledged or which shall hereafter be acknowledged by a married woman before a judge of one of the Superior Courts of Westminster, or a Master in Chancery, or before two of the Perpetual Commissioners or two Special Commissioners appointed as by the said act is required, shall be impeached or impeachable at any time after the certificate of such acknowledgment has been filed of record in the Court of Common Pleas at Westminster, by reason only that such judge or Master in Chancery, or such commissioners, or either of them, was or were interested or concerned, either as a party or parties, or as attorney or solicitor or clerk to the attorney or solicitor of one of the parties, or otherwise, in the transaction giving occasion for such acknowledgment.

Acknowledgment of deed not impeachable by reason only of party before whom same was taken being interested.

2. Provided, that if any proceeding instituted before the thirteenth day of July one thousand eight hundred and fifty-four in the said Court of Common Pleas, for the purpose of quashing or taking off the file of records of the said court any certificate of an acknowledgment of a deed by a married woman, on the ground that such judge or Master in Chancery, or either of such commissioners, was interested or concerned as aforesaid, shall be pending at the passing of this act, it shall be lawful for the said court to proceed with and dispose of the same as if this act had not passed, except that if the said court shall be satisfied that any person or persons acting *bond fide* has or have been induced by the terms of the orders made by the said court in Hilary Term one thousand eight hundred and thirty-four to acknowledge, or to accept a title depending on the acknowledgment of, any deed or deeds before commissioners, one of whom may have been interested or concerned as aforesaid, the said court may refuse

Staying proceedings for quashing certificate of acknowledgment.

No. XI. doubt the truth, and he verily believes the same to be true.] (c)

*Affidavit of
Acknowledg-
ment before
Perpetual
Commissioners,
&c.*

AND lastly, this deponent saith that in the deed acknowledged by the said wife the premises wherein she is stated to be interested are described to be in the parish of A., in the county of D.

SWORN at P. aforesaid this day }
of before me (Attorney's name.)

(Name of Commissioner.)

to permit the certificate to be quashed or taken off the file on such terms as to the payment of costs and expenses as the said court shall think fit to make.

Court of Com-
mon Pleas may
make rules for
preventing
commissioners
who are in-
terested from
taking acknow-
ledgments.

3. The Court of Common Pleas may from time to time make any rules which to them may seem fit for preventing any commissioners interested or concerned as aforesaid from taking any acknowledgment under the said recited act, anything herein contained to the contrary notwithstanding, so nevertheless that no such rule shall make invalid any acknowledgment after the certificate shall have been filed of record as aforesaid.

(c) If the wife receives any pecuniary consideration for her acknowledgment, for words in brackets above, substitute a clause to the following effect:—

“That the sum of £ was to be paid to her in lieu of her interest in the said estate, and this deponent saith that before her acknowledgment was so taken the said sum of £ was paid to her the said (*wife*) in the presence of this deponent, and of the said commissioners.”

If the provision for making the acknowledgment has been made by deed, then for the above clause substitute—

“That a provision was to be made in consequence of her giving up her interest in such the said estates. AND this deponent further saith, that before her acknowledgment was so taken he was satisfied, and does now verily believe that such provision has been made by deed, and that such deed has been produced to the said commissioners.”

No. XII.

FORM OF AFFIDAVIT TO ACCOMPANY AN ACKNOWLEDGMENT OF A MARRIED WOMAN, WHO IS UNKNOWN TO THE COMMISSIONERS, (a) OR THE COMMISSIONER TO WHOM SHE IS KNOWN IS ACTING AS HER ATTORNEY OR SOLICITOR. VARIATION WHERE THE ACKNOWLEDGMENT IS BY TWO MARRIED WOMEN.

IN THE COMMON PLEAS,

A. B. of C., in the county of D., accountant, and E. F., of C. aforesaid, gentleman, one of the attorneys of the Court of Common Pleas, and one of the commissioners mentioned in the certificate hereunto annexed, severally make oath and say, and first the deponent A. B. for himself saith, that he knows (*Christian name of wife who acknowledges the deed*) the wife of (*husband's name*) in the certificate hereunto annexed mentioned, and that at the time of making the acknowledgment therein mentioned the said (*wife*) was of full age. AND this deponent E. F., for himself saith, that the acknowledgment in the said certificate mentioned was made by the said (*Christian name of wife*), and the certificate signed by this deponent and (*name of other commissioner*) of C., in the said county of D., the commissioner in the said certificate

(a) It sometimes happens that the commissioner, attorney or solicitor who is Practical to make the affidavit is a stranger to the married woman, and cannot, therefore, remarks. conscientiously depose to the facts, his knowledge of the party, or of her being of full age. To meet this difficulty the following rule was made in Trinity Term, 1834, by which "It is ordered, that from and after the last day of this term, where such parts of the affidavit verifying the certificate of acknowledgment taken in pursuance of the late act of Parliament respecting fines and recoveries," as state "the deponent's knowledge of the party making the acknowledgment, and his being of full age;" cannot be deposed to by a commissioner, attorney or solicitor, the same may be deposed to by some other person, whom the person before whom the affidavit shall be made, shall consider competent so to do."

No. XII.

Form of
Affidavit to
accompany an
Acknowledg-
ment of
a Married
Woman, who is
unknown
to the
Commissioners,
&c.

mentioned on the day and year therein mentioned at C., in the county of D., in the presence of this deponent, and that at the time of making such acknowledgment, the said (*Christian name of wife*) was of competent understanding, and that the said (*Christian name of wife*) knew the said acknowledgment was intended to pass her estate in the premises, respecting which such acknowledgment was made. AND this deponent E. F., for himself further saith, that he this deponent is not in any manner interested in the transaction giving occasion for such acknowledgment, nor concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor or agent so interested or concerned. AND this deponent E. F., for himself further saith, that previous to the said (*Christian name of wife*) making the said acknowledgment, he this deponent, inquired of the said (*wife*) whether she intended to give up her interest in such estates, and that in answer to such inquiry the said (*wife*) declared that she did intend to give up her interest in the said estate, without having any provision made for her in lieu of or in return for or in consequence of her so giving up her interest: of which declaration of the said (*Christian name of wife*) this deponent has no reason to doubt the truth, and he verily believes the same to be true. AND, lastly, that the said E. F. for himself said, that in the deed acknowledged by the said (*Christian name of wife*) the premises wherein she is stated to be interested are described to be in the parish of G., in the county of D.

SWORN by the deponents, A. B. and E. F.,	} A. B. E. F.
at C., in the county of D., this day	
of , before me	

No. XIII.

FORM OF AN AFFIDAVIT TO OBTAIN A SPECIAL COMMISSION TO TAKE THE ACKNOWLEDGMENT OF A MARRIED WOMAN RESIDENT WITHIN THE KINGDOM, WHO, FROM ILLNESS, IS UNABLE TO LEAVE HER RESIDENCE TO ATTEND PERSONALLY BEFORE THE COMMISSIONERS, TO BE MADE BY ANY ONE COGNIZANT OF THE FACT TO BE STATED IN IT.

IN THE COMMON PLEAS.

A. B., of &c., in the county of D., maketh oath and saith, that by a certain deed intended to be executed by (*Christian name*), the wife of (*husband*), of &c. in the county of , and by certain other parties, it is intended that the said (*Christian name of wife*) should release [or extinguish] her interest in certain premises [or money] in the said deed mentioned, and that in order to give full effect to the same, it will be necessary that the said (*Christian name of wife*) should acknowledge the same, in pursuance of the provisions of an act passed in the fourth year of His late Majesty's reign, intituled *An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple modes of Assurance*. AND this deponent further saith, that the said (*Christian name of wife*) is confined to her room by illness, and that the nearest residence of a Perpetual Commissioner for taking acknowledgments under the said act, is upwards of miles from the residence of the said (*Christian name of wife*), and that there is no second commissioner residing within miles of the residence of the said (*Christian name of wife*.) AND this deponent further saith, that two Perpetual Commissioners cannot be procured to attend to take the acknowledgment of the same deed by the said (*Christian name of wife*) for the fees fixed by the rules of this court, nor without incurring considerable expense. AND this deponent further saith, that C. D.

No. XIII. of &c. in the county of , attorney-at-law, and (E. F.), of
 Form of an Affidavit to obtain a Special Commission to take the Acknowledgment of a Married Woman, &c. &c. in the said county of , (a) are in the deponent's judgment fit and proper persons to receive the acknowledgment of the said deed by the said (*Christian name of wife*), and are willing to attend for that purpose. AND this deponent lastly saith, that the present residence of the said (*Christian name of wife*) is at , in the county aforesaid, and that the said deed is intended to be acknowledged by her there.

SWORN, &c.

A. B.

Practical suggestions.

(a) More than two persons may be named as special commissioners, which it may sometimes be advantageous to do to prevent the inconvenience that might arise in case one of them should be unable to attend when required.

No. XIV.

FORM OF CERTIFICATE OF ACKNOWLEDGMENT TAKEN BY
COMMISSIONERS SPECIALLY APPOINTED.

THESE are to certify, that on the day of in the year 18 ,
before us the undersigned (C. D.) and (E. F.), two of the commis-
sioners specially appointed pursuant to an act passed in the fourth
year of the reign of his late Majesty King William the Fourth,
intituled, *An Act for the Abolition of Fines and Recoveries, and for
the substitution of more simple modes of Assurance*, for taking the
acknowledgment of any deed, (*Christian name*) the wife of
(*husband*) appeared before me [*continue form, ut ante*, Section I.,
No. VII., clause 2, p. 67.]

C. D.

E. F.

No. XV.

FORM OF RETURN TO BE INDORSED BY SPECIAL COMMIS-
SIONERS, WHO TAKE THE ACKNOWLEDGMENT ON THE
BACK OF THE COMMISSION.

THE execution of the within commission appears by the com-
mission hereunto annexed.

C. D.

E. F.

No. XVI.

FORM OF NOTE OF INSTRUCTIONS FOR A SPECIAL COMMISSION TO TAKE THE ACKNOWLEDGMENT OF A MARRIED WOMAN RESIDING ABROAD.^(a)

Special commission to take the acknowledgment of (*Christian name*) the wife of (*husband*), Esquire, now residing (*name and place of residence abroad*) of a certain deed (*DESCRIBE nature of deed, as of release, surrender, &c., as the case may be*) whereby it is intended to pass (*or extinguish, &c.*) her estate as a married woman.

Commissioners' names :

<i>A. B. of &c.</i>	{ <i>Add description according to the fact.</i>
<i>C. D. of &c.</i>	

(a) The memorandum and certificate of acknowledgment on the deed will be the same as in the forms, *ante*, Section I., No. VII., clauses 1 and 2, p. 67. The form of the return to be indorsed on the commission the same as in No. XV., *ante*, p. 367.

No. XVII.

FORM OF AFFIDAVIT TO BE MADE BY ONE OF THE COMMISSIONERS WHERE THE ACKNOWLEDGMENT IS TAKEN ABROAD.

IN THE COMMON PLEAS.

A. B., of &c., (*INSERT place of residence and occupation in life*) one of the commissioners mentioned in the certificate hereunto annexed, maketh oath and saith, that he knows (*Christian name*) the wife of (*husband*) in the said certificate mentioned, and that the acknowledgment therein mentioned was made by the said Mary, and the certificate signed by this deponent, and C. D., of &c., aforesaid (*state occupation in life*), the other commissioner in the said certificate mentioned, on the day and year therein mentioned, in the presence of this deponent [*continue the affidavit in the same manner as where the acknowledgment is taken before a Perpetual Commissioner, ut ante, No. XI., p. 359.*]

Sworn at (*INSERT name of place where the affidavit is sworn*) the day of A. D., 18 } A. B.

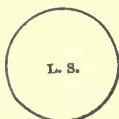
[*Signature of person before whom the affidavit is sworn who must be described by his title of office, authorized by the law of (name of country) to administer oaths in (name of place where affidavit is made.)*]

No. XVIII.

FORM OF NOTARIAL CERTIFICATE TO BE ANNEXED TO THE
PRECEDING AFFIDAVIT.

I (*name of notary*), notary public, of lawful authority admitted and sworn, dwelling at (*name of place of residence*) in the kingdom of (OR *other name of State wherein the acknowledgment has been taken, as the case may be*) hereby certify that A. B., of &c., on the day of 18 , was sworn in my presence to the truth of the affidavit hereunto annexed by and before (*name of person before whom affidavit was sworn*) in aforesaid; and I do hereby certify the said (*name of person before whom affidavit was sworn*) is (STATE *here the name of his office, by which he is authorized to administer oaths*) in aforesaid, and as such is qualified to administer oaths there, and that the name A. B. subscribed to the said affidavit, and also the name of (*person before whom the affidavit was sworn*) subscribed to the jurat thereof, are of the respective proper handwriting of the said A. B. and (*person before whom the affidavit was sworn*), and were respectively signed by them in my presence. In testimony whereof I have hereunto set my hand and notarial seal.

Dated the day of A.D.



Notarial Seal.

Name of Notary.

SECTION V.

MIXED ASSURANCES.

No. I.—CONVEYANCE OF FREEHOLD ESTATES OF INHERITANCE, AND FOR LIVES ; ASSIGNMENT OF LEASEHOLDS FOR YEARS, AND COVENANT TO SURRENDER COPTHOLDS OF INHERITANCE.

No. II.—DEED OF COVENANT BETWEEN TWO TENANTS IN COMMON WHO HAVE PURCHASED FREEHOLD PROPERTY WHICH HAS BEEN CONVEYED TO THEM IN EQUAL UNDIVIDED MOETIES, BY WHICH THEY MUTUALLY AGREE NOT TO SELL THEIR RESPECTIVE PORTIONS WITHOUT GIVING THE OTHERS THE OPTION OF PURCHASING IT AT A VALUATION TO BE SETTLED BY ARBITRATION.

No. III.—CONVEYANCE BY THE TRUSTEES OF A WILL OF THE UNSOLD PORTION OF REAL ESTATE DEVISED UPON TRUSTS FOR SALE FOR THE PURPOSE OF RAISING MONEY TO PAY THE DEBTS AND LEGACIES IN AID OF THE PERSONAL ESTATE, TO THE DEVISEE, TO WHOM THE PREMISES ARE DEVISED, SUBJECT TO THE ABOVE CHARGES, ALL OF WHICH ARE NOW SATISFIED.

No. IV.—APPORTIONMENT OF A GROUND RENT BETWEEN TWO PURCHASERS OF LEASEHOLD PREMISES HELD UNDER ONE LEASE, WITH CROSS MUTUAL COVENANTS BY EACH WITH THE OTHER TO PAY HIS APPORTIONED GROUND RENT AND TO PERFORM THE COVENANTS OF THE LEASE, WITH CROSS POWERS OF DISTRESS BETWEEN THEM.

No. V.—AGREEMENT BY A LESSEE WITH HIS LANDLORD FOR AN APPORTIONMENT OF THE RENTS.

No. VI.—MUTUAL COVENANTS BY TWO PURCHASERS OF LEASEHOLD PROPERTY, HELD UNDER ONE LEASE FOR THE APPORTIONMENT OF THE RENTS, WITH MUTUAL POWERS OF DISTRESS BY WAY OF INDEMNITY.

No. VII.—COVENANT TO PRODUCE TITLE DEEDS.

No. VIII.—GENERAL LICENCE TO DEMISE COPTHOLDS.

No. IX.—ASSENT BY AN EXECUTOR TO A BEQUEST OF A LEASEHOLD ESTATE.

No. X.—ASSENT TO A BEQUEST AND ASSIGNMENT OF LEASEHOLD PROPERTY BY AN EXECUTOR TO A LEGATEE, THE LEGATEE COVENANTING TO INDEMNIFY THE FORMER AGAINST THE RENTS AND COVENANTS OF THE LEASE.

No. XI.—GRANT OF A RIGHT OF WAY.

No. XII.—RELEASE OF A RIGHT OF WAY.

No. XIII.—GRANT OF A STRIP OF GROUND FOR THE PURPOSE OF CONSTRUCTING
A PRIVATE TRAM ROAD OR RAILWAY, FOR A TERM OF YEARS.

No. XIV.—GRANT OF A RIGHT OF WAY TO A MINE FOR A TERM OF YEARS.

No. XV.—CONVEYANCE IN PURSUANCE OF THE ACT TO FACILITATE THE CON-
VEYANCE OF WORKHOUSES, AND OTHER PARISH PROPERTY.

No. XVI.—FORM OF AN EXCHANGE IN PURSUANCE OF THE ACT FOR FACILI-
TATING THE CONVEYANCE OF WORKHOUSES, &c.

No. XVII.—FORM OF SECURITY UNDER THE ACT FOR FACILITATING THE
CONVEYANCES OF WORKHOUSES, &c.

No. XVIII.—FORM OF TRANSFER OF SECURITY.

No. I.

CONVEYANCE OF FREEHOLD ESTATES OF INHERITANCE, AND
FOR LIVES, ASSIGNMENTS OF LEASEHOLDS FOR YEARS, AND
COVENANTS TO SURRENDER COPYHOLDS OF INHERI-
TANCE. (a)

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital that vendor is seised in fee of freehold of inheritance. 3. That leasehold premises for lives were conveyed to vendor. 4. Of will devising premises to vendor in fee, expectant on the decease of testator's widow. 5. Of original demise of leaseholds for years. 6. Of admission of vendors to copyholds. 7. Of contract to purchase. | <ol style="list-style-type: none"> 8. Testatum. 9. Habendum of freeholds of inheritance to dower uses. 10. Habendum of leaseholds for residue of lives. 11. Habendum: leaseholds for years for residue of term. 12. Covenant from vendor to surrender copyholds. 13. Covenants for title; quiet enjoyment; free from incumbrances; and for further assurance. |
|--|---|

1. THIS INDENTURE made the day of A. D., 185 , Parties.
BETWEEN (*vendor*), of, &c., of the first part, (*purchaser*), of, &c.,
of the second part, and (*dower trustee*), of, &c., of the third part.

(a) Where properties of different holdings were purchased at one entire price, How purchase-money may be apportioned so as to save stamp duty. it was a very common practice to take distinct and separate assurances, and to apportion the purchase money in respect of each, by which means a considerable saving in stamp duty might have been effected; as, under the provisions of the General Stamp Act (55 Geo. 3, c. 184), a purchaser is allowed, where the property is conveyed by separate assurances, to apportion his purchase-money in such manner as he might think fit, so that a distinct price or consideration for each be set forth in the principal or only deed of conveyance. Thus, for example, if a purchaser had agreed to purchase lands, partly freehold, and partly copyhold, for the sum of 40,000*l.*, the stamp duty upon the aggregate amount would have been 450*l.*; yet he might, by apportioning the purchase-money on the freehold portion of the property at 39,980*l.*, and the copyhold at 20*l.*, have effected a saving of 99*l.*; the duty on 39,980*l.*, being 350*l.*; and on 20*l.*, 20*s.* But under the provisions of the recent statute 13 & 14 Vict. c. 97, a graduated scale of stamp duties has been effected, which now prevents adjustments of this kind.

No. I.

*Conveyance
of Freehold
Estates of
Inheritances
and for
Lives, &c.*

Recital that
vendor is
seised in fee
of freehold
of inheritance.
That leasehold
premises for
lives were
conveyed to
vendor.

2. WHEREAS the said (*vendor*) is seised to him and his heirs of an estate of inheritance in fee simple of the hereditaments and premises described and set forth in the first schedule hereunder written, and intended to be hereby granted and released, with their appurtenances.

3. AND WHEREAS, by indenture of release made in pursuance of an act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties, made between (*releasor*), of the one part, and the said (*vendor*) of the other part, the hereditaments and premises described and set forth in the second schedule hereunder written were released and assured unto the said (*vendor*), his heirs and assigns, for and during the natural life of him the said (*vendor*) and (*C. D.*) and (*E. F.*) in the now reciting indenture described, and the lives and life of the survivors or survivor of them, at the yearly rent of 20*l.*, payable quarterly, and subject to the covenants, conditions and agreements in the now reciting indenture contained.

Of will devising
premises to
vendor in fee
expectant on
the decease of
testator's
widow.

4. AND WHEREAS (*testator*), late of, &c., by his last will dated the day of , devised the hereditaments and premises described in the third schedule hereunder written, unto and to the use of his wife (*wife's name*) and her assigns during the term of her life, without impeachment of waste, and after her decease, the said testator gave and devised the same premises unto and to the use of the said (*vendor*) his heirs and assigns for ever; and the said testator having died on or about the day of without having altered or revoked his said will, the same was proved by his executors therein named in the Prerogative Court of the Archbishop of Canterbury, on the day of .

Of original
demise of
leaseholds
for years.

5. AND WHEREAS by indenture bearing date on or about the day of 1795, and made between (*lessor*) of the one part, and (*lessee*) of the other part, the leasehold messuages and premises described and set forth in the fourth schedule hereunder written, were demised unto the said (*lessee*), his executors, administrators and assigns, from thenceforth for the term of 1,000 years; the residue of which said term, by virtue of divers mesne assignments, and other acts and assurances in the law, and ultimately by an

indenture of assignment dated the day of , and made between (*assignor*) of the one part, and the said (*vendor*) of the other part, is now vested in the said (*vendor*.) (b)

No. 1.
Conveyance
of Freehold
Estates of
Inheritances
and for
Lives, &c.

6. AND WHEREAS, at a Court Baron holden for the manor of A—— in the county of B——, on or about the day of , the said (*vendor*) was duly admitted tenant of the copyhold hereditaments and premises described and set forth in the fifth schedule hereunder written, with their appurtenances, TO HOLD the same to him, his heirs and assigns, according to the custom of the said manor, subject to the rents, duties, suits and services therefore due and of right accustomed.

Of admission
of vendor to
copyholds.

7. AND WHEREAS the said (*purchaser*) has contracted with the said (*vendor*) for the absolute purchase of all and singular the said freehold estates of inheritance, and for lives, in possession, as also the reversionary estate expectant on the decease of the said (*testator's widow*), who is still living, and the said leaseholds for years, and the said copyhold estates of inheritance, for the sum of 4,500*l*.

Of contract to
purchase.

8. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of 4,500*l*. sterling, paid by the said (*purchaser*) to the said (*vendor*) on the execution hereof, the receipt whereof the said (*vendor*) hereby acknowledges, and therefrom doth release the said (*purchaser*), his heirs, executors, administrators and assigns, HE the said (*vendor*) DOTH by these presents, and according to the respective natures and qualities of the premises, grant, release, assign and confirm unto the said (*purchaser*), his heirs, executors, administrators and assigns, first, ALL and singular the messuages, tenements, lands and premises described and set forth in the first schedule hereunder written; secondly, ALL and singular the messuages, farms and tenements, lands, and premises described and set forth in the schedule hereinunder written; and thirdly, ALL THAT the remainder or reversion in

Testatum.

(b) It is the more general practice to assign the leasehold estates by a distinct deed from that conveying the freeholds; the latter, of which descending upon the heir, will entitle him to the custody of the purchase deed which is essential to support the executor's title to the leasehold portion of the property.

Practical
observations.

No. I.

*Conveyance
of Freehold
Estates of
Inheritances
and for
Lives, &c.*

fee simple expectant on the determination of the estate for life, of the said (*testator's widow*) of and in all and singular the messuages, tenements, farms, hereditaments, and premises described and set forth in the third schedule hereunder written; and *fourthly*, all and singular the leasehold messuage or tenement and premises described and set forth in the third schedule hereunder written; AND all rights, members and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments and premises belonging; AND all the estate, right, title and interest, both legal and equitable, of him the said (*vendor*) therein, TOGETHER with all deeds and writings relating to the title thereof now in his possession, or which he can obtain without suit.

Habendum of
freeholds of
inheritance to
dower uses.

9. TO HAVE AND TO HOLD the said messuages, tenements, lands, and all and singular other the hereditaments and premises hereby granted and described in the first and third schedules hereunder written, unto the said (*purchaser*) and his heirs, TO SUCH USES, upon such trusts, and for such ends, intents and purposes, as the said (*purchaser*) shall from time to time, or at any time, by deed or deeds appoint; and in default of and until such appointment, and subject thereto, TO THE USE of the said (*purchaser*) and his assigns for the term of his natural life, without impeachment of waste, and after the determination of that estate by any means in his lifetime, TO THE USE of the said (*dower trustee*), his executors and administrators, during the life of and IN TRUST for the said (*purchaser*) and his assigns; and after the determination of the said hereinbefore lastly limited estate, TO THE USE of the said (*purchaser*), his heirs and assigns for ever; AND it is hereby declared that no widow of the said (*purchaser*) shall be entitled to dower out of the said hereditaments and premises hereby granted.

Habendum of
leaseholds for
residue of lives.

10. AND TO HAVE AND TO HOLD the said messuages, farms and tenements described and set forth in the second schedule hereunder written, and hereby also granted and released, with their and every of their rights, members and appurtenances, unto and to the use of the said (*purchaser*), his heirs and assigns, for and during all the rest, residue and remainder of the lives of the said (*vendor*), (*C. D.*) and (*E. F.*), and the lives and life of the survivors and survivor of them, subject to the rents and covenants, conditions and agree-

ments contained in the said hereinbefore recited indenture of release of the day of , and which on the tenant or lessee's part are or ought to be paid, done, observed and performed.

No. 1.
 ———
*Conveyances
 of Freehold
 Estates of
 Inheritances
 and for
 Lives, &c.*

11. AND TO HAVE AND TO HOLD the said leasehold messuage or tenement described and set forth in the third schedule hereunder written, with the appurtenances thereunto belonging, unto the said (*purchaser*), his executors, administrators and assigns, henceforth for all the rest, residue and remainder of the said term of 1,000 years, which is now therein to come and unexpired.

Habendum :
 leaseholds for
 years for residue
 of term.

12. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, HE the said (*vendor*) DOTII hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs and assigns, that he the said (*vendor*), will, at the costs of the said (*purchaser*), his executors or administrators, at or before the next general or other court to be holden in or for the said manor of A—— in the county of B——, or other the manor or manors whereof the said copyhold hereditaments are holden, well and effectually surrender into the hands of the lord or lady for the time being of the said manor or manors, by the acceptance of the steward, or by the hands of two or more customary tenants of the said manor or manor, according to the custom or respective customs thereof, or otherwise well and effectually convey and assure to the use and behoof of the said (*purchaser*), his heirs and assigns, ALL that copyhold or customary messuage or tenement, lands and hereditaments, situate within and being parcel of the said manor of A——, and to which the said (*vendor*) was so admitted tenant as aforesaid, and which said messuage and tenement and premises are described in the said surrender as, ALL, &c. [HERE INSERT *particular description*.] AND ALL rights, members and appurtenances to the said copyhold hereditaments belonging or appertaining; TO THE INTENT that the said (*purchaser*), his heirs or assigns, may be admitted tenant of the same copyhold hereditaments and premises on the court-rolls of the said manor; TO HOLD to him, his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor, subject to the rents, duties, suits and services therefore due and of right accustomed. AND FURTHER, that in the

Covenant from
 vendor to
 surrender
 copyholds.

No. I.

Conveyance
of Freehold
Estates of
Inheritances
and for
Lives, &c.

meantime, and until such surrender shall be made and perfected, and the said (*purchaser*) or his heirs shall be admitted tenant to the said copyhold hereditaments and premises, the said (*vendor*) and his heirs shall and will stand and be seised or possessed thereof, IN TRUST, and for the sole use and benefit of the said (*purchaser*), his heirs and assigns for ever, and to be surrendered and disposed of, from time to time, as he or they shall direct or appoint; NEVERTHELESS so that the said (*vendor*), his heirs, executors or administrators, may, during the continuance of this trust, deduct out of the rents and profits, or otherwise out of the said copyhold hereditaments and premises, all such expenses as he or they may incur in respect of the same premises.

Covenants
for title.

13. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his heirs, executors, administrators and assigns, that notwithstanding any act or thing done or permitted by the said (*vendor*) or any of his ancestors or testators to the contrary, the said (*vendor*) now hath in himself good right by these presents to grant, release, assign and confirm the said freehold and leasehold hereditaments and premises, and also to surrender the said copyhold hereditaments in manner aforesaid, according to the true intent and meaning of these presents. AND FURTHER, that the same freehold, leasehold and copyhold hereditaments and premises may be peaceably and quietly held and enjoyed accordingly, without let, suit, eviction, ejection, molestation or denial of or by the said (*vendor*), or any other person or persons rightfully claiming through or under him, or through or under any of his ancestors or testators; and that free from all estates, rights, titles, liens, charges and incumbrances whatsoever created or occasioned by the said (*vendor*) or any other person or persons rightfully claiming under or through him, or through or under any of his ancestors or testators. AND MOREOVER, that the said (*vendor*) and all persons whomsoever rightfully claiming any estate or interest, legal or equitable, in the said freehold, leasehold and copyhold hereditaments and premises, through or under him, shall and will, from time to time and at all times hereafter, at the request and costs of the said (*purchaser*), his appointees, heirs, executors, administrators or assigns, enter into, execute and perfect all such further acts,

For quiet
enjoyment.

Free from
incumbrances.

For further
assurance.

deeds, conveyances, assignments, surrenders and other assurances whatsoever, for the further, better or more perfectly or satisfactorily assuring and confirming the said freehold, leasehold and copyhold hereditaments and premises, unto and to the use of the said (*purchaser*), his heirs, executors, administrators and assigns, according to the respective natures and qualities of the said premises, and the true intent and meaning of these presents, as the said (*purchaser*), his appointees, heirs, executors, administrators or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done or executed.

IN WITNESS, &c.

THE FIRST SCHEDULE to which the within-written Indenture refers: [*DESCRIBE the parcels of which the vendor was seised in fee.*]

THE SECOND SCHEDULE, &c.: [*HERE DESCRIBE the parcels comprised in the indenture of release of the day of .*]

THE THIRD SCHEDULE, &c.: [*HERE DESCRIBE parcels comprising the reversionary estate devised by the recited will.*]

THE FOURTH SCHEDULE: [*HERE DESCRIBE the leasehold estates for years.*]

THE FIFTH SCHEDULE: [*HERE DESCRIBE copyhold premises from last surrender.*]

No. I.

Conveyances
of Freehold
Estates of
Inheritances
and for
Lives, &c.

No. II.

DEED OF COVENANT ENTERED INTO BETWEEN TWO TENANTS IN COMMON WHO HAVE PURCHASED FREEHOLD PROPERTY WHICH HAS BEEN CONVEYED TO THEM IN EQUAL UNDIVIDED MOIETIES, BY WHICH THEY MUTUALLY AGREE NOT TO SELL THEIR RESPECTIVE PORTIONS WITHOUT GIVING THE OTHER THE OPTION OF PURCHASING AT A FAIR VALUATION, THE AMOUNT OF WHICH IS TO BE DETERMINED BY ARBITRATION, EACH PARTY BINDING HIMSELF IN THE SUM OF 1,000*l.*; BY WAY OF LIQUIDATED DAMAGES, FOR THE DUE PERFORMANCE OF HIS COVENANTS.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of conveyance to tenants in common. 3. Of agreement between parties that neither shall sell without giving the other the option of purchasing. 4. Testatum: each party covenants not to sell his undivided moiety with- | <ol style="list-style-type: none"> out giving the other six calendar months' previous notice, and an option of purchasing. 5. That neither will sell to any other person until the expiration of the notice. 6. Each binds himself in 1,000<i>l.</i> liquidated damages for the performance of his covenants. |
|---|--|

Parties.

1. THIS INDENTURE, made the day of , A.D. 18 ,
BETWEEN (*A.*), tenant in common of one undivided moiety, of,
&c., of the one part, and (*B.*), tenant in common of the other
undivided moiety, of, &c., of the other part.

Recital of the
conveyance to
tenants in
common.

2. WHEREAS by indenture of release in pursuance of an act for
rendering a release as effectual for the conveyance of freehold

Practical
observations.

(*a*) The present deed of covenant does not seem to come within any of the covenants set out in the schedule annexed to the New Stamp Act; consequently, a 1*l.* 15*s.* stamp, as chargeable by the statute 53 Geo. 3, c. 184, under the head of "Conveyance, not otherwise provided for," will be required.

estates as a lease and release by the same parties, dated the day of , and made between (*vendors*) of the first part, (*trustee*) of the second part, the said (*A.*) of the third part, and the said (*B.*) of the fourth part, certain hereditaments therein mentioned, by the description of, ALL [HERE DESCRIBE *parcels*], with their appurtenances, were conveyed and assured unto the said (*trustee*) and his heirs, to certain uses therein declared (that is to say), as to one equal undivided moiety of the said hereditaments and premises, TO SUCH USES as the said (*A.*) should by deed appoint, and in default of such appointment, TO THE USE of the said (*A.*) and his assigns for life, without impeachment for waste, with a limitation TO THE USE of the said (*trustee*), his executors and administrators, during the life of and in trust for the said (*A.*) and his assigns, with the ultimate limitation TO THE USE of the said (*A.*), his heirs and assigns for ever. AND as to the other equal undivided moiety of the said hereditaments and premises, to similar uses for the benefit of the said (*B.*), his heirs and assigns.

No. II.

*Deed of
Covenant
entered into
between two
Tenants in
common, &c.*

3. AND WHEREAS on or about the time of completing the aforesaid purchase it was mutually agreed by and between the said (*A.*) and (*B.*), that in case either of them should at any time hereafter be desirous of selling his undivided moiety in the said hereditaments and premises, he should give notice in writing thereof to the other of them, who should have the option of purchasing the same if he thought proper so to do, at a fair valuation, the amount of which was to be settled by arbitration in the usual manner, and for the due performance of which agreement on their respective parts, they each further agree to bind themselves respectively to the other of them in the sum of 1,000*l.*, by way of liquidated damages, and not by way of penalty.

*Of agreement
between parties
that neither
shall sell
without giving
the other the
option of
purchasing.*

4. NOW THEREFORE THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, they the said (*A.*) and (*B.*) do by these presents for themselves, their heirs, executors and administrators, mutually covenant, declare, promise and agree to and with each other, their heirs, executors and administrators, that in case either of them, the said (*A.*) or (*B.*), shall at any time hereafter be desirous of selling, and shall intend to dispose of his undivided moiety of and in the said hereditaments and premises,

*Testatum :
each party
covenanting not
to sell his
undivided
moiety without
giving the
other six
calendar months
previous notice,
and an option
of purchasing.*

No. II.

*Deed of
Covenant
entered into
between two
Tenants in
common, &c.*

or any part thereof, that then and in such case, the party hereto so desiring to sell, shall give six calendar months previous notice in writing of such his intention to the other of them, or leave the same at his usual place of abode or business, who shall thereupon, if he shall think proper so to do, but not otherwise, have the option of purchasing the same, at a fair valuation, the amount of which shall be fixed by two persons, one to be appointed by the said (A.), and the other to be appointed by the said (B.); and if such two referees cannot agree as to the amount of such valuation, they shall call in an umpire, whose determination shall be binding and conclusive between the parties. AND in case either the said (A.) or (B.), shall fail to appoint a referee, then the determination of the referee appointed by the other party, shall be binding and conclusive on both parties.

That neither
will sell to any
person, until
the expiration
of the notice.

5. AND FURTHER, that the said party hereto so desirous of selling his moiety in the said hereditaments and premises, shall not nor will enter into any contract, stipulation or agreement for the sale of the same hereditaments and premises, to or with any person or persons whomsoever, excepting the other said party hereto, who is to have the option of purchasing the same, until after the expiration of the said period of six calendar months, from the time of giving such notice as aforesaid, unless such party, having the option of purchasing as aforesaid, shall, before the expiration of that period, by writing under his hand, decline to purchase the said hereditaments and premises, upon the terms as aforesaid.

Each binds
himself in
1,000*l.* liqui-
dated damages
for the per-
formance of his
covenants.

6. AND LASTLY, each of them, the said (A.) and (B.), hereby bindeth himself, his heirs, executors and administrators, unto the other of them, his executors and administrators, in the sum of 1,000*l.* sterling, by way of liquidated damages, and not by way of penalty, for the due and exact performance of the above covenants, so mutually entered into by them as aforesaid.

IN WITNESS, &c.

No. III.

CONVEYANCE BY THE TRUSTEES OF A WILL OF THE UNSOLD PORTION OF REAL ESTATE DEVISED UPON TRUSTS FOR SALE FOR THE PURPOSE OF RAISING MONEY TO PAY DEBTS AND LEGACIES IN AID OF THE PERSONAL ESTATE, TO THE DEVISEE, TO WHOM THE PREMISES ARE DEVISED SUBJECT TO THE ABOVE CHARGES, ALL OF WHICH ARE NOW SATISFIED.

- | | |
|--|---|
| 1. Parties. | 5. Of devisee's request to trustees to convey to him. |
| 2. Recital of will. | 6. Testatum. |
| 3. Of death of testator, &c. | 7. Habendum. |
| 4. That trustees have satisfied the charges. | |

1. THIS INDENTURE, made the day of A.D. 185 , Parties.
BETWEEN (*trustees of will*) of, &c., of the one part, and (*devisee*)
of, &c., of the other part.

2. WHEREAS (*testator*) late of, &c., by his last will, dated Recital of will.
the day of , devised all his messuages, tenements, lands,
hereditaments, and all other his real estate whatsoever and where-
soever, of which he should die seised or possessed of, unto and to
the use of the said (*trustees*), their heirs and assigns, *upon trust* by
sale or mortgage of the whole, or of a competent part thereof, or
out of the rents and profits of the same, or by all, any, or either
of the ways and means aforesaid, to levy and raise such sum and
sums of money as might be necessary for the payment of the said
testator's just debts, funeral and testamentary expenses, or any
legacy or legacies he might bequeath by his said will in aid of his
personal estate, the latter of which the said testator declared was
to be the primary fund for the satisfaction thereof, and that his
said real estate was only to be a secondary fund in aid of the same.
And after payment and satisfaction of the aforesaid charges, and

No. III.

Conveyance
of Trustees of
a Will to the
Unsold
Portion, &c.

subject thereto, the said testator directed that his said real estate should be held UPON TRUST, for the said (*devisee*), his heirs and assigns, and the said testator appointed the said (*trustees*) joint executors of his said will.

Of death of
testator, &c.

3. AND WHEREAS [CONTINUE *recital of death of testator and probate of his will, ut ante*, Section I., No. V., clause 3, p. 60.]

That trustees
have satisfied
the charges.

4. AND WHEREAS the said (*trustees*) in pursuance of the trusts of the said recited will, have sold a portion of the said hereditaments and premises so devised to them as aforesaid, and out of the purchase moneys arising therefrom, and also out of the rents and profits of the said devised hereditaments and premises, have paid all such debts and legacies as were charged thereon in aid of the said testator's personal estate, and which the latter proved insufficient to discharge; the whole of which charges are now wholly paid off, satisfied and discharged.

Of devisee's re-
quest to trustees
to convey to
him.

5. AND WHEREAS the said (*devisee*) has requested the said (*trustees*) to convey the legal estate of the unsold portion of the said devised hereditaments and premises unto him the said (*devisee*), his heirs and assigns, in manner hereinafter appearing.

Testatum.

6. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of five shillings paid by the said (*devisee*) to the said (*trustees*) on the execution of these presents, the receipt of which is hereby acknowledged, THEY the said (*trustees*) DO by these presents, grant, release, convey, ratify, and confirm unto the said (*devisee*), and his heirs, ALL, &c. [DESCRIBE *parcels*; INSERT *general words*; *all-estate clauses*, and *all-deeds clause, ut ante*, Section I., No. I., clause 5, pp. 44, 45.]

Habendum.

7. TO HAVE AND TO HOLD, [CONTINUE HABENDUM, *ut ante*, Section I., No. III., clause 3, p. 55; AND insert *covenant from trustees that they have done no act to incumber, ut ib.*, No. V., clause 6, p. 61.]

IN WITNESS, &c.

No. IV.

APPORTIONMENT OF A GROUND RENT BETWEEN TWO PURCHASERS OF LEASEHOLD PREMISES HELD UNDER ONE LEASE, WITH CROSS MUTUAL COVENANTS BY EACH WITH THE OTHER TO PAY HIS APPORTIONED GROUND-RENT, AND TO PERFORM THE COVENANTS OF THE LEASE, WITH CROSS POWERS OF DISTRESS BETWEEN THEM.

- | | |
|---|---|
| <p>1. Parties.</p> <p>2. Recital of lease.</p> <p>3. That lessee erected two dwelling-houses on the premises, which he had sold and assigned to the two purchasers.</p> <p>4. Of agreement for the apportionment of the rent.</p> <p>5. First testatum, by which one purchaser covenants to indemnify</p> | <p>the other from the rents and covenants of the lease, so far as concerns his own portions of the premises.</p> <p>6. Power of distress for the recovery of any sums which the other purchaser shall pay in respect of the rents and covenants agreed to be paid by the covenantor.</p> <p>7. Similar covenants of indemnity by the other purchaser.</p> |
|---|---|

1. THIS INDENTURE, made the day of A.D. 185 , Parties.
BETWEEN (*one purchaser*), of, &c., of the one part, and (*other purchaser*), of, &c., of the other part.

2. WHEREAS by indenture of lease bearing date on or about Recital of lease.
the day of , and made between (*lessor*) of the one part, and (*lessee*), of the other part, IT IS WITNESSED, that the said (*lessor*), for the considerations therein mentioned, did grant and demise unto the said (*lessee*), ALL that piece or parcel of land [CONTINUE *description of parcels*]; TO HOLD the same with the appurtenances, unto the said (*lessee*), his executors, administrators and assigns, from henceforth, for the term of ninety-nine years, subject to the yearly rent of 12*l.*, payable quarterly as therein mentioned, and to certain covenants, clauses, stipulations and agreements in the now-reciting indenture of lease reserved and contained.

No. IV.

*Apportionment
of Rent
between Two
Purchasers of
Leasehold
Premises held
under
One Lease.*

That lessee
erected two
dwelling-houses
on the premises,
which he has
sold and
assigned to the
two purchasers.

3. AND WHEREAS the said (*lessee*) shortly after obtaining the said hereinbefore recited lease of the said piece or parcel of land, erected two dwelling-houses with suitable offices thereon, and hath since sold one of the said dwelling-houses and premises to the said (*one purchaser*), and the other of the said dwelling-houses and premises to the said (*other purchaser*), all which said two dwelling-houses have been respectively assigned by the said (*lessee*) to the said (*one purchaser*) and (*other purchaser*) by two several indentures of assignment bearing even date herewith, but executed previously, for all the residue of the said term of ninety-nine years, subject nevertheless to the payment of the yearly rent of 6*l.* in respect of each of the said dwelling-houses, being one moiety of the yearly rent of 12*l.* reserved in and by the said hereinbefore recited indenture of lease; and also subject to the conditions, stipulations, provisoes and agreements in the same indenture of lease contained, and which, on the tenant or lessee's part, are or ought to be paid, observed and performed, so far as the same severally relate to, or concern each of, the said dwelling-houses and premises thereby assigned.

Of agreement
for the appor-
tionment of the
rent.

4. AND WHEREAS at the time of entering into the contract for the purchase of the said two dwelling-houses, it was stipulated and agreed that each of them the said (*one purchaser*) and (*other purchaser*) should pay the yearly rent of 6*l.* in respect of the premises so purchased by him, being one moiety of the said yearly rent of 12*l.*: and for the more effectually apportioning the same equally between them the said (*one purchaser*) and (*other purchaser*), and for indemnifying each of them, and his executors, administrators and assigns, and the said dwelling-house and premises purchased by him, from the rents, covenants, provisoes, stipulations and agreements reserved and contained in the said hereinbefore recited indenture of lease, on the tenant or lessee's part to be paid, observed and performed in respect of the premises purchased by the other of them, it has been further mutually agreed between the said (*one purchaser*) and (*other purchaser*) that they should respectively enter into the covenants and agreements hereinafter contained.

First testatum,
by which one
purchaser

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreements, and in consideration of the covenants

hereinafter contained on the part of the said (*other purchaser*), the said (*one purchaser*) doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree, with and to the said (*other purchaser*), his executors, administrators and assigns, that he the said (*one purchaser*), his executors, administrators or assigns, shall and will, from time to time and at all times hereafter during the said term of ninety-nine years, well and truly pay or cause to be paid unto the person or persons for the time being entitled to receive the said ground-rent or yearly sum of 12*l.*, so reserved as aforesaid, in and by the said hereinbefore recited indenture of lease, the clear yearly rent of 6*l.*, being one moiety or half part of the said yearly rent of 12*l.*, when and as the same shall become due and payable, according to the true intent and meaning of the same indenture of lease; and shall and will, from time to time during the said term, duly observe and perform the covenants, conditions and agreements in the said hereinbefore recited indenture of lease contained, and which, on the tenant or lessee's part, ought to be paid, observed and performed, so far as such rents, covenants, conditions and agreements relate to or ought to be paid, observed, or performed in respect of the dwelling-house and premises so purchased by the said (*one purchaser*), and so assigned to him by the said indenture bearing even date herewith as aforesaid; and also shall and will, from time to time, and at all times hereafter, keep harmless and indemnified the said (*other purchaser*), his heirs, executors, administrators and assigns, and his and their lands and tenements, goods and chattels, of, from, and against all actions, suits, and other proceedings which may be brought or prosecuted against the said (*other purchaser*), his executors, administrators or assigns, by reason of any neglect, breach or default which shall or may happen by reason of such nonpayment of the rent, or nonobservance or nonperformance of the said covenants, conditions or agreements, or any of them.

No. IV.

*Apportionment
of Rent
between Two
Purchasers of
Leasehold
Premises held
under
One Lease.*

covenants to indemnify the other from the rents and covenants of the lease, so far as concerns his own portion of the premises.

6. AND MOREOVER, that in case the said (*other purchaser*), his executors, administrators or assigns, shall or may, at any time or times hereafter, bear, sustain, pay, or incur any costs, charges or expenses, for or on account of the said yearly rent of 6*l.*, or for or on account of any breach, nonobservance or nonperformance of the said covenants, conditions or agreements, on the tenant or

*Power of
distress for the
recovery of any
sums which the
other purchaser
shall pay in
respect of the
rent and cove-
nants agreed to
be paid by the
covenantor*

No. IV.

*Apportionment
of Rent
between Two
Purchasers of
Leasehold
Premises held
under
One Lease.*

lessee's part to be paid, observed and performed, THEN, and in every such case, and so often as the same shall happen, it shall be lawful for the said (*one purchaser*), his executors, administrators or assigns, into and upon the said dwelling-house and premises so purchased by, and assigned to, the said (*other purchaser*) as aforesaid, by the said hereinbefore recited indenture of assignment bearing even date herewith, to enter, and then and there to distrain for all and every such sum and sums of money, costs, charges and expenses, which he the said (*other purchaser*), his executors, administrators or assigns, shall so sustain, pay or incur; and the distress and distresses then and there found, to take, lead, drive, carry away and impound, and in pound to detain and keep until all and every such sum and sums of money, costs, charges and expenses, so borne, sustained, paid or incurred by the said (*other purchaser*), his executors, administrators or assigns, together with the costs of keeping such distress or distresses, shall be fully paid and satisfied; and in default of payment thereof in due time after such distress or distresses shall have been so taken as aforesaid, to appraise, sell, and dispose of such distress or distresses, or any part thereof, or otherwise to act therein according to due course of law, in like manner as in case of distress for nonpayment of rent reserved upon common leases; TO THE INTENT that thereby and therewith the said (*other purchaser*), his executors, administrators or assigns, shall or may be fully paid and satisfied all and every such sum and sums of money, costs, charges and expenses, as aforesaid.

Similar
covenants
of indemnity
by the other
purchaser.

7. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said recited agreement, and in consideration of the covenants hereinbefore contained on the part of the said (*one purchaser*), his heirs, executors and administrators, HE, the said (*other purchaser*), doth hereby for himself, his heirs, executors and administrators, covenant with the said (*one purchaser*), his executors, administrators and assigns, that he the said (*other purchaser*), his executors, administrators and assigns, shall and will, from time to time, &c. [INSERT *the same covenants, mutatis mutandis, ut ante.*]

IN WITNESS, &c.

No. V.

AGREEMENT BY A LESSEE WITH HIS LANDLORD FOR
APPORTIONMENT OF THE RENTS.

- | | |
|---|--|
| 1. Parties. | 4. Of agreement to apportion rent. |
| 2. Recital of lease for an absolute term of ninety-nine years. | 5. Testatum. |
| 3. Of landlord's intention to sell the property and apportion the rent. | 6. Proviso that agreement shall continue in force under any sale which may be made during the tenancy. |

1. MEMORANDUM OF AGREEMENT made the day Parties.
of A.D. 1852, BETWEEN (*tenant*), of, &c., gentleman of the
one part, and (*landlord*), of, &c., of the other part.

2. WHEREAS by an indenture of lease bearing date the day Recital of
of 1851, and made between the said (*landlord*) of the one lease for an
part, and the said (*tenant*) of the other part, in consideration of the absolute term
rents and covenants therein contained, the said (*landlord*) did de- of ninety-nine
mise and lease unto the said (*tenant*) ALL that messuage or years.
dwelling-house, together with the several pieces of land therein
described, TO HOLD the same, with the appurtenances, unto the
said (*tenant*), his executors, administrators and assigns, from
thenceforth for the term of ninety-nine years, at the yearly rent
of 100*l*.

3. AND WHEREAS the said (*landlord*) has contemplated putting Of landlord's
the said pieces of land up for sale either by public auction or intention to sell
private contract, and to apportion the said yearly rent among the the property
several lots in such proportion as he shall think fit. and apportion
the rent.

4. AND WHEREAS the said apportionment of such rent cannot Of agreement
be effectually made without the consent of the said (*tenant*), who, to apportion
rent.

No. V.

*Form of
an Agreement
by a Lessee
consenting to an
Apportionment
of the Rent, &c.*

Testatum.

at the request of the said (*landlord*), has agreed to enter into the agreements for that purpose hereinafter contained.

5. NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement, and in consideration of the sum of 5*s.*, paid by the said (*landlord*) to the said (*tenant*) on the signing hereof, the receipt of which is hereby acknowledged, HE the said (*tenant*) DOTH hereby for himself, his heirs, executors and administrators, promise and agree with and to the said (*landlord*), his heirs and assigns, that he the said (*landlord*) shall and may apportion the said yearly rent or sum of 100*l.* among the tenements and premises so to be sold as aforesaid, in such proportion and generally in such manner as the said (*landlord*) shall think fit. AND ALSO that he the said (*tenant*) shall and will, upon the completion of the purchase of any part of the said tenements and premises, at the request and costs of the purchaser or purchasers thereof respectively, execute all such deeds and other assurances whatsoever as may be necessary for making such apportionment valid and effectual against the said (*tenant*), and also for his becoming tenant of the tenements and premises so to be sold as aforesaid to the purchaser or purchasers thereof.

Proviso that agreement shall continue in force under any sale which may be made during the tenancy.

6. PROVIDED ALWAYS, AND IT IS HEREBY AGREED, that these presents shall remain in full force and virtue under any sale which may be made during the tenancy of the said (*tenant*) under the said indenture of lease.

IN WITNESS, &c.

No. VI.

MUTUAL COVENANTS BY TWO PURCHASERS OF LEASEHOLD
PROPERTY, HELD UNDER ONE LEASE FOR THE APPOR-
TIONMENT OF THE RENTS, WITH MUTUAL POWERS OF
DISTRESS BY WAY OF INDEMNITY.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of sale by auction. 3. Of the purchase of the two lots. 4. Of assignment to the one purchaser. 5. Of agreement for apportionment and indemnity. | <ol style="list-style-type: none"> 6. Testatum, and covenant to pay one moiety of the rent, and to perform the covenants of the original lease. 7. Power of distress on breach of covenants. 8. Further testatum, containing similar covenants. |
|--|--|

1. THIS INDENTURE, made the day of A.D. 185 , Parties.
BETWEEN (*one purchaser of leaseholds*), of, &c., of the one part,
and (*other purchaser*), of, &c., of the other part. [INSERT *recital*
of lease for ninety-nine years, ut ante, No. IV., clause 2, p. 385.]

2. AND WHEREAS the said (*lessee*) caused the whole of the said ^{Recital of sale} premises comprised in the said indenture of lease to be put up ^{by auction.} for sale by public auction at [INSERT *name of place of sale*], on the day of last, in two distinct lots, pursuant to certain particulars and conditions of sale then and there produced, which, amongst other things, provided that the said yearly rent of £ reserved by the said indenture of lease should be equally apportioned between each of the purchasers of the said lots.

3. AND WHEREAS the said (*one purchaser*) and (*other purchaser*) ^{Of the purchase} attended at the said sale, and being the highest bidders, the said ^{of the two lots.}

No. VI.
*Mutual
 Covenants by
 two Purchasers
 of Leasehold
 Property, held
 under one Lease,
 for the
 Apportionment
 of the Rents.*

Of assignment
 to the one
 purchaser.

(*one purchaser*) was declared to be the purchaser of Lot 1 at the price of £ , and the said (*other purchaser*) was in like manner declared to be the purchaser of Lot 2 at the price of £ .

4. AND WHEREAS by indenture of assignment bearing even date herewith, but executed previously, and made between the said (*lessee*) of the first part, the said (*one purchaser*) of the second part, and the said (*other purchaser*) of the third part, the said (*lessee*), in consideration of the sum of £ , paid to him by the said (*one purchaser*), assigned unto the said (*one purchaser*) ALL, &c. [DESCRIBE *parcels*], TO HOLD the same, with the appurtenances, unto the said (*one purchaser*), his executors, administrators, and assigns, from thenceforth, for all the then unexpired residue of the said term of ninety-nine years, subject nevertheless to the payment of the yearly rent of £ , being one moiety of the yearly rent of £ so as aforesaid reserved by the said hereinbefore recited indenture of lease, and also subject to the covenants on the lessee's part to be observed and performed in such indenture of lease contained, so far as the same should relate to the said thereby assigned premises. AND WHEREAS by another indenture of assignment, &c. [RECITE *assignment of other lot to other purchaser in the same form, ut ante.*]

Of agreement
 for apportion-
 ment and
 indemnity.

5: AND WHEREAS for the more effectually indemnifying each of them the said (*one purchaser*) and (*other purchaser*), and their respective executors, administrators and assigns, and the premises so respectively purchased by them as aforesaid, from the rents and covenants in the said recited indenture of lease reserved and contained, and which ought to be paid, observed and performed by the other of them, in respect of his purchased portion of the said leasehold premises, the said (*one purchaser*) and (*other purchaser*) have mutually agreed to enter into the covenants and agreements hereinafter contained.

Testatum, and
 covenant to pay
 one moiety of
 the rent, and to
 perform the
 covenants of the
 original lease.

6. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the covenants hereinafter contained on the part of the said (*other purchaser*), his heirs, executors and administrators, HE, the said (*one purchaser*), DOETH hereby for himself, his heirs, executors, and administrators,

covenant with the said (*other purchaser*), his executors, administrators and assigns, in manner following: (that is to say,) that he the said (*one purchaser*), his executors, administrators or assigns, will, from time to time, and at all times during the residue of the said term of ninety-nine years, well and truly pay or cause to be paid unto the said (*lessee*), his executors, administrators, or assigns, or other the person or persons for the time being entitled to receive the yearly rent of £ so reserved by the said hereinbefore recited indenture of lease as aforesaid, the clear yearly rent or sum of £ , being one moiety of such yearly rent or sum of £ , when and as the same shall become due and payable, according to the true intent and meaning of the said hereinbefore recited indenture of lease; and also shall and will, during the continuance of the said term, duly observe and perform all the covenants, conditions and agreements, in the said hereinbefore recited indenture of lease contained, and which, on the tenant or lessee's part, are or ought to be observed and performed, so far as such covenants, conditions and agreements relate to the premises comprised in the said hereinbefore firstly recited indenture of assignment which bears even date herewith; AND ALSO shall and will, from time to time, and at all times hereafter, keep harmless and indemnified the said (*other purchaser*), his executors, administrators and assigns, from all actions, suits and other proceedings which may be prosecuted against the said (*other purchaser*), his executors, administrators or assigns, and all damages and costs incidental thereto, which he or they may pay, sustain or be put unto for or by reason of the nonpayment of the said moiety of the said yearly rent of £ , or of the non-observance or non-performance of the said covenants, conditions and agreements, or any or either of them, so far as the same ought to be paid, observed and performed by the said (*one purchaser*), his executors, administrators and assigns.

No. VI.

*Mutual
Covenants by
two Purchasers
of Leasehold
Property, held
under one Lease,
for the
Apportionment
of the Rents.*

7. AND MOREOVER, that in case the said (*other purchaser*) shall at any time hereafter pay any sum or sums of money on account of the said yearly rent or sum of £ , or of the covenants, conditions and agreements hereinbefore covenanted to be paid, observed and performed by the said (*one purchaser*), his executors, administrators and assigns, as aforesaid, or any or either of them,

*Power of
distress on
breach of
covenants.*

No. VI.

*Mutual
Covenants by
two Purchasers
of Leasehold
Property, held
under one Lease,
for the
Apportionment
of the Rents.*

THEN and in such case, and so often as the same shall happen, it shall be lawful for the said (*other purchaser*), his executors, administrators or assigns, into and upon the said messuage or dwelling-house and premises so purchased by the said (*one purchaser*), and so assigned to him by the said hereinbefore firstly recited indenture, which bears even date herewith as aforesaid, to enter, and then and there to distrain for all and every such sum and sums of money and expenses as the said (*other purchaser*), his executors, administrators or assigns, shall so pay or expend; and the distress and distresses then and there found, to take, lead, drive, carry away and impound, and in pound to detain and keep, until the same sum and sums of money, and expenses incurred in taking and keeping such distress or distresses, shall be fully satisfied; and in default of payment thereof in due time after such distress or distresses shall have been so taken as aforesaid, to appraise, sell and dispose of such distress or distresses, or any part thereof, or otherwise to act therein according to due course of law, in like manner as in the case of distress for non-payment of rent reserved on common leases, TO THE INTENT that thereby and therewith the said (*other purchaser*), his executors, administrators and assigns, may be repaid and fully satisfied all such sum and sums of money and expenses as aforesaid.

Further
testatum,
containing
similar
covenants.

8. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said recited agreement, and in consideration of the covenants hereinbefore contained on the part of the said (*one purchaser*), his heirs, &c. [INSERT *same covenants by other purchaser, mutatis mutandis, ut ante*, clauses 6, 7, pp. 392, 393.]

IN WITNESS, &c.

No. VII.

COVENANT TO PRODUCE TITLE DEEDS.

- | | |
|---------------------------------------|---|
| 1. Parties. | 3. That deeds, &c., relate to other property, &c. |
| 2. Recital of purchase by covenantee. | 4. Covenant to produce, &c. |

1. THIS INDENTURE, made the day of A.D. 185 , Parties.
BETWEEN (*covenantor*) of the one part, and (*covenantee*) of the
other part.

2. WHEREAS by indenture of grant and release bearing even date herewith, but executed previously, and made between (*vendor*) of, &c., of the first part, the said (*covenantee*) of the second part, and (*dower trustee*) of the third part. ALL, &c. (DESCRIBE *parcels*), with their appurtenances, were conveyed and assured, and now stand limited, *to such uses*, &c. [CONTINUE *recital of limitation to uses to bar dower, ut ante*, Sect. I., No. I., clause 2, pp. 43, 44.]

3. AND WHEREAS the deeds and writings specified and set forth in the schedule hereunder written, relate as well to the title of the hereditaments and premises hereinbefore described, as also to certain other hereditaments of greater value, which were some time since conveyed by the said (*vendor*) to the said (*covenantor*), to whom the said title deeds and writings were also delivered as the person legally entitled to the custody thereof, being the purchaser of the largest amount in value of the hereditaments and premises to which the same deeds and writings relate, BE the said

No. VII. (covenantor), at the time of such delivery, undertaking and agreeing to enter into the covenant to produce such deeds and writings in manner hereinafter appearing.

Covenant to
produce, &c.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the premises, HE the said (covenantor), DOTH hereby for himself, his heirs, executors and administrators, covenant with the said (covenantee), his heirs and assigns [CONTINUE covenant, *ut ante*, Section I., No. V., clause 9, pp. 62, 63.]

IN WITNESS, &c.

THE SCHEDULE TO WHICH THE ABOVE-WRITTEN INDENTURE REFERS.

[INSERT *schedule, ut ante*, p. 63.]

No. VIII.

GENERAL LICENCE TO DEMISE COPYHOLD PREMISES.(a)

BE IT REMEMBERED, that on the day of , (A. B.), Esquire, Lord of the Manor of H—, in the county of S—, by (steward's name), gentleman, steward of the said manor, HATH granted to (lessor copyholder), one of the customary tenants of the said manor, license to demise and lease to any person or persons(b), ALL and singular the copyhold or customary lands, tenements and premises whatsoever of him the said (copyholder), situate within the said manor, and holder of the same by copy of court roll, or any part or parcel thereof, with the appurtenances, for the term of years, or any other term not exceeding that period, to begin and be computed from the 29th day of September next; SAVING AND RESERVING unto the lord or lords, lady or ladies, for the time being of the said manor, all and all manner of fines accruing upon the death or alienation of any customary tenant of the said premises, not only according to the present actual annual value of the said premises, but also according to the actual value of the same at the time when such fine shall become due and payable,

Memorandum of
licence to
demise.

Reservation of
fines and rights
of forfeiture.

(a) A license to demise copyholds, or memorandum thereof if granted out of court, and copy of court roll of any such licence if granted in court, where the yearly value of the estate to be demised shall be expressed in such licence, and shall not exceed 75*l.*, the same duty as on a lease at a yearly rent equal to such yearly value under the act 13 & 14 Vict. c. 97. And in all other cases a duty of 10*s.*

(b) If the copyholder is to be restricted from leasing by way of mortgage, insert—

“But not by way of mortgage.”

No. VIII.

*General Licence
to demise
Copyhold
Premises.*

Reservation
of rents and
services.

and this whether such value shall arise from improvements made in or upon the said premises by new buildings erected thereon, or otherwise; AND ALSO RESERVING unto the lord or lords, lady or ladies, of the said manor for the time being, all and all manner of rents, forfeitures, and other services of the said premises due and of right accustomed, in as ample a manner and form as if this licence had not been granted; AND for this licence the said (*copyholder*) hath paid the said lord the sum of 10s. [according to the custom of the said manor.] (c)

(c) If no settled amount of fine is prescribed by the custom of the manor, the words within brackets above must be left out.

No. IX.

ASSENT BY AN EXECUTOR TO THE BEQUEST OF A LEASEHOLD ESTATE. (a)

- | | |
|---|--|
| 1. Exordium.
2. Recital of will bequeathing the property to legatee.
3. Of death of testator and probate of his will. | 4. That executor has paid all testator's debts, funeral and testamentary expenses.
5. Testatum. |
|---|--|

1. TO ALL TO WHOM THESE PRESENTS SHALL Exordium.
 COME, (*executor*), of, &c., executor of the last will of (*testator*),
 late of, &c., deceased, sendeth greeting.

(a) A bequest of chattels, whether real or personal, does not vest absolutely in the legatee until the executor has assented to the bequest. This assent may be either expressed or implied, the law having prescribed no precise form by which it shall be given, or from whence it is to be inferred. It seems, however, that if an executor, by mere word of mouth only, informs a legatee that he intends him to take according to the will, it will be a sufficient assent to the bequest: (*Shep. Touch.* 456; *Hawkes v. Sanders*, Gow. 293; 2 Wms. Exors. 985; 1 Hughes Pract. Sales, 555, 2nd edit.) An assent may also, it seems, be implied from the devisee of the term entering on the property, and exercising acts of ownership over it, without any complaint or objection by the executor: (*Richardson v. Gifford*, Ad. & Ell. 52; S. C. 3 Nev. & Man. 325.) And if an executor assent to a bequest to one for life, it will enure equally to those in remainder, and *è converso*, for the particular estate and the remainders constitute altogether but one estate: *Welken v. Elkington*, Plow. 251; *Lampet's case*, 10 Co. 47, b; *Adams v. Pierce*, 3 P. Wms. 12; Com. Dig. tit. "Admon.," C. 6.) So an assent to a bequest of a lease for years, is an assent to a condition or contingency annexed to it, as, if a bequest be to the testator's widow, so long as she continues unmarried, and if she marry, then a rent payable out of the land, the executors' assent to a bequest of the term, is an assent to that of the rent also in case of her second marriage: (*Goff v. Haywood*, 1 Roll. Abr. 620, tit. "Dev. E.," pl. 2; S. C., *sub. nom.* *Gough v. Howard*, 3 Bulstr. 121; S. C., *sub. nom.* *Gough v. Hayward*, Bridg. 52.) In like manner assent to a bequest of a chattel real is an assent to the bequest of a rent arising out of it: (Com. Dig. "Admon.," c. 6.) But if a lessee for years bequeath the rent to A. and

Practical
 observations.

No. IX.

*Form of Assent
by an Executor
to the Bequest
of a Leasehold
Estate.*

Recital of will
bequeathing the
property to
legatee.

2. WHEREAS the said (*testator*), by his last will, dated on or about the day of , in the year , amongst other devises and bequests, bequeathed unto (*legatee*) ALL that leasehold estate called D—, situate, lying, and being in the parish of B—, in the county of C—, which the said (*testator*) then held of the dean and chapter of E—, for all the unexpired residue of a certain term of years, and for all other the estate, interest, benefit and right of renewal of him the said testator therein; and appointed the said (*executor*) executor of his said will.

the land to B., it has been doubted whether the executor's assent that A. shall have the rent is an assent that B. shall have the land: (3 Bulstr. 122; Bridg. 55; Plow. 251, b.) It is, however, said to be now settled, that in this case also an assent to the bequest to the one shall enure to the benefit of the other, on the ground that, as the assent of the executor is required as well for the benefit of creditors as his own, an inference arises from his assent to one of the legatees of the specific property, that he had no occasion for the term or rent to pay his testator's debts, for if he had, then his assent to either of the legatees would be improper, as both ought to abate *pro rata*: (1 Rep. leg. 738, 3rd. edit.; 2 Wms. Exors. 986; 1 Hughes Pract. Sales, 556, 2nd edit.)

Assent of one
of several
executors
sufficient.

The assent of one of the executors, where there are several, is sufficient (2 Wms. Exors. 987): it may be given even before probate of the will, and, generally speaking, if once given, it cannot afterwards be retracted (Godb. pl. 2, c. 20, s. 1; Went. Off. Exors. 52, 14th edit.); still, it seems that if the assent had not been completed by possession, and its recall is unattended with injury to third persons; as, for example, a *bond fide* purchase from the legatee on the faith of such assent, it seems only reasonable that the executor should, under particular circumstances, have the power of retracting it; as, where he has assented, upon a reasonable ground, that the assets were sufficient to answer all demands, but unknown debts are unexpectedly claimed, which occasions a deficiency: (1 Rep. Leg. 743, 3rd edit.; 2 Wms. Exors. 988.) But in no case would such retraction be allowed as against a *bond fide* purchaser for valuable consideration,

It is always advisable, however, to have a written assent from the executor, declaring in express terms that he consents to the bequest. This is sometimes done by indenture, and the property is actually assigned by the executor to the legatee; but this is wholly superfluous, as an assent by mere writing under hand, and unstamped, as in the above form, will be equally efficacious as a deed or indenture under hand and seal, with a proper deed stamp attached to it. It seems, however, even if the assent be made under hand and seal, that a stamp will not be required unless it be delivered also; but this can never be safely relied upon in practice.

When an actual
assignment will
be preferable to
simple assent
under hand
only.

But although, generally speaking, a mere writing under hand will be as effectual as an actual assignment for the purpose of declaring an executor's assent to a bequest, still, under particular circumstances, it will be for the benefit of the executor to make an actual assignment, in which should also be contained a covenant from the legatee to indemnify the executors from the rents and covenants of the lease, in every case where the testator was the original lessee, or has entered into an express covenant for the payment of the rents and performance of the covenants, for to these the executors will still remain liable to the extent of the assets in their hands, notwithstanding their assent to the bequest, and an actual assignment of the property to the legatee. For this purpose the above form will be found well adapted.

3. AND WHEREAS the said (*testator*) died on or about the day of last, without having altered or revoked his said will, which was duly proved by the said (*executor*) in the Prerogative Court of the Archbishop of Canterbury, on the day of following.

No. IX.
Form of Assent
by an Executor
to the Bequest
of a Leasehold
Estate.

4. AND WHEREAS the said (*executor*) having fully satisfied all the just debts, funeral and testamentary expenses, of the said (*testator*), is willing to assent to the bequest of the said leasehold premises so made to the said (*legatee*) as aforesaid.

Of death of
testator and
probate of his
will.
That executor
has paid all
testator's debts,
funeral and
testamentary
expenses.

5. NOW THEREFORE KNOW YE, that I the said (*executor*) DO, by these presents, declare my assent to the said bequest of the said leasehold estate and premises so made by the said (*testator*) to the said (*legatee*) as aforesaid.

Testatum.

IN WITNESS whereof I have hereunto set my hand, this day of , A.D., 18 .

No. X.

ASSENT TO A BEQUEST, AND ASSIGNMENT OF LEASEHOLD PROPERTY, BY INDENTURE, BY AN EXECUTOR TO A LEGATEE, THE LEGATEE COVENANTING TO INDEMNIFY THE FORMER AGAINST THE RENTS AND COVENANTS OF THE LEASE.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum, by which the executor assents to the bequest, and assigns the property to the legatee. 3. Habendum. | <ol style="list-style-type: none"> 4. Covenant from the executor that he has done no act to incumber. 5. Covenant by legatee to indemnify executor against the rents and covenants of the lease. |
|--|--|

Parties.

1. THIS INDENTURE, made the day of A.D. ,
BETWEEN (*executor*), of, &c., executor of the last will of (*testator*),
late of, &c., deceased, of the one part, and (*legatee*), of, &c., of the
other part. [INSERT *recital of will bequeathing the property; the
death of testator; probate of his will; and that executor has discharged
all testator's debts, funeral and testamentary expenses, as in last
precedent, clauses 2, 3, 4, pp. 400, 401.*]

Testatum, by
which the
executor assents
to the bequest,
and assigns the
property to the
legatee.

2. NOW THIS INDENTURE WITNESSETH, that in consideration
of the sum of 5s. sterling, this day paid by the said (*legatee*) to the
said (*executor*), the receipt of which is hereby acknowledged, HE,
the said (*executor*), DOTH hereby assent to the said bequest, and
doth also by these presents assign, ratify and confirm unto the
said (*legatee*), ALL THAT the said hereinbefore mentioned leasehold
estate called D—— in the said county of C——, so devised and
bequeathed to the said (*legatee*) by the said hereinbefore recited
will of the said (*testator*) deceased as aforesaid (all which said
premises were, by indenture of lease dated on or about the

day of _____, demised by the Dean and Chapter of E—— to the said (*testator*), from thenceforth for an absolute term of _____ years, subject to the rents and covenants therein reserved and contained); AND all the estate, right, title, interest, benefit, and right of renewal, property, claim and demand whatsoever, both legal and equitable, of him the said (*executor*) therein.

No. X.
Assent
to a Bequest and
Assignment of
Leasehold
Property, by
Indenture, by an
Executor
to a Legatee.

3. TO HAVE AND TO HOLD the said leasehold tenements, estate, and all and singular other the premises hereinbefore described, and hereby assigned, with the appurtenances, unto the said (*legatee*), his executors, administrators and assigns, henceforth for all the unexpired residue of the said term of _____ years, now therein to come and unexpired, and for all other the estate, term and interest of him the said (*executor*) therein, SUBJECT NEVERTHELESS to the payment of the rents, and to the observance and performance of the covenants, conditions and agreements, in the said hereinbefore mentioned indenture of lease reserved and contained, on the tenant or lessee's part to be observed and performed.

4. AND the said (*executor*) doth hereby for himself, his executors and administrators, covenant with the said (*legatee*), his executors, administrators and assigns, that he the said (*executor*), hath not, nor with his privity hath the said (*testator*) deceased, done or permitted any act whereby the said leasehold tenement, estate and premises hereby assigned, or any part thereof, can be impeached, forfeited or incumbered.

Covenant from
the executor
that he has
done no act to
incumber.

5. AND the said (*legatee*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*executor*), his executors, administrators or assigns, that he the said (*legatee*), his heirs, executors and administrators, shall and will, from time to time and at all times hereafter, well and sufficiently defend, protect, save harmless and keep indemnified the said (*executor*), his heirs, executors, administrators and assigns, and his and their lands and tenements, goods and chattels, and also the estate and effects of the said (*testator*) deceased, of, from and against all losses, costs, damages and expenses, which he or they may incur, sustain, pay, or be put unto, for or on account of the nonpayment

Covenant by
legatee to
indemnify exe-
cutor against
the rents and
covenants of
the lease.

No. X. of the rent, or non-observance or non-performance of the covenants,
Assent conditions and agreements in the said hereinbefore recited inden-
to a Bequest and ture of lease reserved and contained, on the tenant or lessee's part
Assignment of to be paid, observed or performed, or any or either of them, or
Leasehold in relation thereto.
Property, by
Indenture, by an
Executor
to a Legatee.

IN WITNESS, &c.

No. XI.

GRANT OF A RIGHT OF WAY FOR HORSES, CARRIAGES, AND CATTLE. VARIATION, WHERE THE GRANT IS LIMITED TO A FOOTWAY ONLY. (a)

1. Parties.
2. Testatum.

3. Covenant from grantee to keep the way in repair.

6 folios, 61 words.

1. THIS INDENTURE, made the day of A.D. 185 , Parties.
BETWEEN (*grantor*), of, &c., of the one part, and (*grantee*), of, &c.,
of the other part.

(a) According to Lord Coke (Co. Lit. 566), who cites the authority of Fleta and Bracton, there are three kinds of ways: first, a footway, which is called *iter*, *quod est jus eundi vel ambulandi homini*, and this way is the first way. The second is a foot way and a horseway, which is called *actus, ab ujendo*; and this vulgarly is called pack and prime way, because it is both a footway, which was the first or prime way, and a pack or drift way also. The third is *via aditus*, which contains the other two, and also a cartway, &c.; and this is *jus eundi, vehendi et vehiculum et jumentum ducendi*. But it seems that the distinctions here taken by Lord Coke, and which correspond with the definitions of the civil law, are not strictly in accordance with the law of England at the present day, as it has been expressly decided that a right, which, adopting Lord Coke's definition, is of the highest class, as for instance, a right to drive carts, does not of necessity include the right to drive cattle, ranged by him in the subordinate class. Thus, in *Dyson v. Ballard* (1 Taunt. 279), it was decided that a right of way in any one kind does not of necessity include a right of way of any other kind; consequently, a plea of a right of way to drive carriages, would be no answer to an alleged trespass in riding on horseback over a man's lands; neither would a plea of a right of passage for carts, be a justification to a trespass committed by driving cattle. This doctrine is also supported by the more recent case of *Cowling v. Higginson* (4 M. & W. 250.) This was an action of trespass, which the defendant justified under a plea of right of way for horses, carts, waggons and carriages, and it was held that proof of user for farming purposes, did not necessarily prove a right of

No. XI.

*Grant of
a Right of Way
for Horses,
Carriages, and
Cattle.*

Testatum.

2. WITNESSETH that in consideration of the sum of 100*l.* sterling, paid by the said (*grantee*) to the said (*grantor*) on the execution hereof, the receipt of which is hereby acknowledged, and also in consideration of the covenants and agreements hereinafter contained on the part of the said (*grantee*) to be observed and performed, HE, the said (*grantor*) DOTH, by these presents, for himself, his heirs, executors and administrators, covenant and grant with and to the said (*grantee*), his heirs and assigns, that it shall be lawful for the said (*grantee*), his heirs and assigns, and his and their agents and servants, and the tenants and occupiers for the time

Cowling v.
Higginson.

way for the purpose of conveying the produce of a coal mine under the defendant's land. (See Gale & Whateley on Easements, 213.)

In the course of the argument Lord Abinger, C. B. observed: "The extent of the right must depend upon the circumstances. If the road led through a park, the jury might naturally infer the right to be limited; but if it went over a common, they might infer a right for all purposes. Using a road as a footpath would not infer a general right, nor proof that a party had used the road to go to church only. Some analogy should be shown between farming and mining purposes." And Parke, B., said: "If it had been shown that from time immemorial it had been used as a way for all purposes that were required, would not that be evidence of a general right of way? If they show that they have used it time out of mind for all the purposes that they wanted it would seem to me to give them a general right. You must generalize to some extent. If your argument is to be taken strictly, it must be confined to the identical carriages that have previously been used upon the road, and would not warrant even the slightest alteration in the carriage or the loading, or the purpose for which it was used. In delivering his judgment, Parke, B. also observed: "To make out this plea it is necessary to show the enjoyment of the way generally *as of right*, for the period during which the plea states it to have been used; he must have used it for all the purposes *as of right*; and such *as* was for all purposes for which it was wanted would be evidence to go to a jury of a general right. Under a plea of prescription for a way, it was necessary to show a user of it for all purposes time out of mind, according to the usual terms in which such a plea is pleaded. If it is shown that the defendant, and those under whom he claimed, had used the way whenever they had required it, it is strong evidence to show that they had a general right to use it for all purposes, and from which a jury might infer a general right. In this particular case I think the user is evidence to go to the jury, that the defendant had a right to a way for all purposes for twenty years. As to the effects of such evidence it is unnecessary to offer any opinion. If the way is confined to a particular purpose, the jury ought not to extend it, but if it is proved to have been used for a variety of purposes, then they might be warranted in finding a right of way for all. You must generalize to some extent, and whether in the present case to the extent of establishing a right for agricultural purposes only, is a question for a jury."

And in the case of *Higham v. Rabbit* (C. P. Trin. Term. 1839,) the Court of Common Pleas also determined that the finding by a jury of a right for the purpose of carting timber, did not support a plea of a right of way for all carts, carriages, horses, and on foot, or even amount to proof of any one of those rights taken separately, so as to admit of the verdict being entered distributively on the issue joined on the plea. (See Gale & Whateley on Easements, 215.)

being of (DESCRIBE the parcels in respect of which the right of way is to be granted), and all other persons, for the benefit and advantage of the said (*grantee*), his heirs and assigns, from time to time, and at all times from henceforth, at his and their will and pleasure, and whether by day or by night, (b) [and for all purposes whatsoever, to go over and return with horses, carts, waggons, wains and carriages of every kind and description, laden or unladen, and also to drive all manner of cattle and beasts whatsoever, in, along, over and throughout a certain road or way, marked out and fenced off by the said (*grantor*) over certain closes of land of him the said (*grantor*) in the parish of A—, in the county of H—; which said road or way is of the breadth of feet, or thereabout, throughout, and leads from to , and which said road or way, together with its course and direction, is delineated and set forth in a map or plan in the margin of these presents, AND ALSO with full and free power, license and authority for the said (*grantee*), his heirs and assigns, from time to time, to make causeways, and otherwise to amend and repair the said road or way as occasion shall require.]

No. XI.
—
Grant of
a Right of Way,
for Horses,
Carriages, and
Cattle.
—

3. AND the said (*grantee*) doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said (*grantor*), his heirs and assigns, that he the said (*grantee*), his heirs or assigns, shall and will, from time to time, and at all times for ever hereafter, at his and their own proper costs, in all things well and sufficiently amend and keep the said road or way in a proper and substantial repair, and also the hedges

Covenant from
grantee to keep
the way in
repair.

(b) If a footway only is intended to be granted substitute the following clause for the words within brackets above:

“to pass and repass, go over and return, in, through, along, over and across certain fields or closes of land called , whereof the said (*grantor*) is seised in fee simple, by, over and along a certain footway leading from to the said premises, a map or plan of which said pathway is particularly delineated and set forth in the margin of these presents.”

Grant of a
footway.

No. XI. and fences lately erected and made thereon by the said (*grantor*)
on both sides thereof.(c)

*Grant of
a Right of Way
for Horses,
Carriages, and
Cattle.*

IN WITNESS, &c.

(c) As a general rule, whenever a right of way is granted, the grantee ought to keep it in repair upon the long-established principle that "he who hath the use of the thing ought to repair it," and thus, in accordance with the rules of the civil law, which imposes the burthen of repair in cases of easement upon the owner of the dominant, and not upon the owner of the servient tenement, (Bract. lib. 6, fol. 222; *Pomfret v. Ricraft*, 1 Saund. 322; Com. Dig. "Chimin," (D. 6); *Gerrard v. Cooke*, 2 Bos. & Pull. N. R. 103; *Taylor v. Whitehead*, 2 Doug. 745.) But a grantor of a right of way may be bound either by express stipulation, or by prescription, to repair it; but if a man is bound by prescription to the repair of a way, he need not keep it in better repair than it always was: (Com. Dig. tit. "Chimin," D. 6.)

Some curious points relating to rights of way were discussed in the recent case of *Pinnington v. Galland*, 22 L. T. Rep. 41. There, A. seised in fee of five closes of land, sold them to different purchasers. The conveyances were all executed the same day, but the order of execution could not be ascertained. None contained any special grant of any right of way; but at the time of the conveyance, a way was in use from the highroad over one of the closes to another of them purchased by B., whose conveyance contained the words, "together with all ways to the said closes belonging." B. took possession and used the way, but afterwards on a sale by him to C., D. obstructed the way. There was no access to the close from the public road, except the way in question, and one other way more circuitous and less commodious, which at a former time had been specially granted to the purchaser of a close lying above that of the plaintiff, and which went over the lands of other persons. The questions were, is the defendant entitled to obstruct the way? Did it pass by the conveyance? It was held that the plaintiff was entitled to the way by implied grant if his conveyance was first executed—by implied reservation if the defendant's was executed first.

No. XII.

RELEASE OF A RIGHT OF WAY FROM THE GRANTEE TO THE GRANTOR.

- | | |
|---|--|
| 1. Parties. | 4. Testatum. |
| 2. Recital of the grant of right of way. | 5. Covenant from relessor that he has good right to release. |
| 3. Of agreement to relinquish right of way. | 6. For further assurance. |

9 folios, 10 words.

1. THIS INDENTURE, made the day of A.D. 185 , Parties.
BETWEEN (*relessor*), of, &c., of the one part, and (*relessee*), of, &c.,
of the other part.

2. WHEREAS by indenture dated on or about the day Recital of the grant of right of way.
of , made between the said (*relessee*) of the one part, and the
said (*relessor*) of the other part, the said (*relessee*), for the consid-
erations therein mentioned, did thereby grant to the said (*relessor*),
his heirs and assigns, a certain right of way for horses, carts,
waggons, wains, and carriages of every kind and description, and
also a right to drive all manner of cattle in, along, over and
throughout a certain road or way over certain closes of land
of him the said (*relessee*), in the parish of A—, in the county of
H—, and leading from to , the plan of which
said road is set forth in a map or plan in the margin of the now
reciting indenture.

3. AND WHEREAS the said (*relessor*) hath agreed to relinquish Of agreement to relinquish right of way.

No. XII. his said right of way hereinbefore mentioned unto the said (*relessee*)
for the sum of 50*l*.

Release of
a Right of Way
from the
Grantee to the
Grantor.

Testatum.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the sum of £50 sterling, paid by the said (*relessee*) to the said (*relessor*) on the execution hereof, the receipt of which the said (*relessor*) hereby acknowledges, and therefrom doth release, exonerate and for ever discharge the said (*relessee*), his heirs, executors, administrators and assigns; HE the said (*relessor*) DOTH by these presents remise, release, relinquish and for ever quit claim unto the said (*relessee*) and his heirs, ALL THAT the aforesaid road or right of way, so as aforesaid granted unto the said (*relessor*) by the said hereinbefore recited indenture of the day of , AND all rights and privileges whatsoever which he the said (*relessor*) now hath in, over, upon or throughout the same; TO THE INTENT that the said right of way may be for ever extinguished, and that the said (*relessee*), his heirs and assigns, shall and may at all times hereafter, have, hold, use, occupy, possess and enjoy the said hereditaments and premises, over which such right of way was so granted as aforesaid, freed and absolutely exonerated and discharged therefrom, and all other easements, privileges, claims and demands whatsoever, of or by the said (*relessor*), his heirs or assigns, or any other person or persons rightfully claiming by, from, through, under or in trust for him.

Covenant from
relessor that he
has good right
to release.

5. AND the said (*relessor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*relessee*), his heirs and assigns, that he the said (*relessor*) now hath in himself good right to release or otherwise relinquish the said right of way unto the said (*relessee*), his heirs and assigns in manner aforesaid, according to the true intent and meaning of these presents.

For further
assurance.

6. AND ALSO that he the said (*relessor*), and all persons rightfully claiming through or under him, shall and will, from time to time, and at all times hereafter, at the request and costs of the said (*relessee*), his heirs or assigns, enter into, execute, and perfect all such further releases, or other assurances, for the further, better or more perfectly or satisfactorily releasing, relinquishing, assuring

and confirming the said road or right of way hereby released, unto the said (*relessee*), his heirs and assigns, according to the true intent and meaning of these presents, as the said (*relessee*), his heirs or assigns, or his or their counsel in the law shall, require, and as shall be tendered to be done and executed.

No. XII.
*Release of
a Right of Way
from the
Grantee to the
Grantor.*

IN WITNESS, &c.

GRANT OF A STRIP OR PIECE OF GROUND FOR THE PURPOSE OF CONSTRUCTING A PRIVATE TRAM ROAD OR RAILWAY LEADING TO AND FROM A MINE, FOR A TERM OF YEARS.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum. 3. Authority to use engines and other machinery. 4. To authorize others to use the railway. 5. Habendum. 6. Reddendum. 7. Covenant by lessees for payment of rent. 8. To construct railway in an efficient manner. 9. To keep the railway well drained, and to sow grass seeds on the embankments. 10. To fence off the railway from the adjoining lands. | <ol style="list-style-type: none"> 11. To permit lessor to view the condition of the repairs. 12. To keep and leave the railway in good and substantial repair. Lessor to be entitled, if he pleases, to take machinery at a valuation. In case lessor shall decline to take machinery at a valuation, lessees are authorized to remove it for their own benefit. 13. Power of distress. 14. Proviso for avoiding the grant for breach of contract by lessee. <p style="text-align: center;"><i>Additional or substituted clause.</i></p> <p>A. Not to suffer other persons to use the railway without the authority of the lessor.</p> |
|---|---|

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 ,
BETWEEN (*lessor*), of, &c., of the one part, and (*lessees*), of, &c.,
of the other part.

Testatum.

2. WITNESSETH, that in consideration of the rents hereby reserved, and of the covenants hereinafter contained on the part of the said (*lessees*), their executors, administrators and assigns, to be paid and performed, the said (*lessor*) DOTH by these presents give, grant and demise unto the said (*lessees*), their executors, administrators and assigns, ALL that strip, pieces or parcels of land or ground, as the same are now staked and marked out, extending in one continued line from to [DESCRIBE *the parcels over which the railway is to extend*]; with full and free liberty, licence, power and authority, in, under, upon, throughout

and along all the said pieces or parcels of land hereby demised, to lay down and construct a regular and continued iron railway, either with a single or a double line, for the purpose of conveying ores, metals and minerals, coal, timber, or any other materials for all purposes connected with the said mine, or for any other purpose or purposes whatsoever, for all or any part of such railway, and to unite or join the said railway with any other railway or railways; and to erect any houses, buildings, sheds, steam or other engines, rollers, walls, fences, mounds, embankments, gates, bridges, leats, sewers, gutters, drains, watercourses, and other conveniences which may be deemed necessary or proper for the formation, management and repair of the said railway, or for depositing or keeping the said ores, metals and minerals, coals, timber, or other materials to be carried or passed over or along the said railway, or any part thereof:

No. XIII.

*Grant of Pieces
of Ground
for purpose of
constructing
Railway leading
to and from a
Mine.*

3. AND ALSO to use thereon such engines, either fixed or locomotive, waggons and other carriages, horses, and other means, and to employ such artificers, workmen, servants and others, and generally to use such ways, means, and contrivances as may be required for the effectual exercise and enjoyment of this demise, and of the liberty, licence, powers and authorities hereby granted.

*Authority to
use engines and
other
machinery.*

4. AND ALSO with full liberty, licence, power and authority, at all times during the said term hereby granted, to authorize, by writing, any other person or persons whomsoever to use and employ the said railway, upon any terms or conditions which shall not be inconsistent with the terms of this present demise, for all or any portion of the said term hereby granted, as fully and effectually, to all intents and purposes, as the said (*lessees*), their executors, administrators or assigns, might use and enjoy the same under and by virtue of these presents. (a)

*To authorize
others to use
the railway.*

5. TO HAVE AND TO HOLD the said pieces or parcels of land or ground, and all and singular other the premises hereby demised

Habendum.

(a) If the lessees are to be restricted from suffering other persons to use the railway without the authority of the lessor, the above clause must be omitted; and in a subsequent part of the deed, the lessees should enter into a covenant to that effect, as in the form *infra*, A. *Practical suggestions.*

No. XIII. unto the said (*lessees*), their executors, administrators and assigns, from the 29th day of September last past, for the full end and term of twenty-one years, from thenceforth next ensuing.

*Grant of Pieces
of Ground
for purpose of
constructing
Railway leading
to and from a
Mine.*

Reddendum.

6. YIELDING AND PAYING, therefore, yearly and every year during the said term, unto the said (*lessor*), his heirs and assigns, the yearly rent or sum of 55*l.* sterling, by equal half-yearly payments, on the 25th day of March, and the 29th day of September, free from all rates, taxes and deductions whatsoever; the first half-yearly payment to be made on the 25th day of March now next ensuing.

Covenant by
lessees for
payment of the
rent.

7. AND the said (*lessees*) do hereby for themselves, their heirs, executors and administrators, jointly and severally covenant with the (*lessor*), his heirs and assigns, that they the said (*lessees*), or some or one of them, their, or some or one of their executors, administrators or assigns, will well and truly pay unto the said (*lessor*), his heirs or assigns, the said yearly rent of 55*l.* hereby reserved, on the several days hereinbefore appointed for payment thereof.

To construct
railway in an
efficient manner.

8. AND ALSO shall and will, with all reasonable diligence, forthwith lay down and construct upon the most approved principles, upon a proper level, and in an efficient and workmanlike manner, a regular and continued iron railway, in, over, along and throughout the whole line of the said pieces or parcels of land or ground hereby demised.

To keep the
railway well
drained, and to
sow grass seeds
on the
embankments.

9. AND ALSO shall and will, from time to time and at all times during the said term hereby granted, with proper and sufficient drains and watercourses, and other effectual ways and means, drain and keep dry the said railway and works; and also level and sow with sufficient grass seeds all such parts of the embankments or sides adjoining the said railway along the whole extent thereof, as shall be capable of producing grass.

To fence off the
railway from
the adjoining
lands.

10. AND ALSO do and shall, with all reasonable diligence, form an effectual fence or boundary along each side of the said railway, either by a quickset thorn hedge or hedges, or such other sufficient

fences as will effectually fence off the said railway from the adjoining lands. (b)

11. AND ALSO shall and will at all times permit and suffer the said (*lessor*), his heirs or assigns, and his or their agent or agents, to have free ingress, egress and regress, into, upon, and throughout the said railway, at all reasonable times, for the purpose of viewing the condition of the repairs thereof.

No. XIII.

*Grant of Pieces
of Ground
for purpose of
constructing
Railway leading
to and from a
Mine.*

To permit lessor
to view the
condition of the
repairs.

12. AND ALSO shall and will, from time to time and at all times during the said term, whenever the same shall become necessary, lay down new rails, and also in all respects maintain and keep the said railway, and all houses, buildings, sheds, steam, or other engines, rollers, walls, fences, embankments, mounds, gates, bridges, leats, sewers, gutters, drains, watercourses, and other works thereunto belonging, in good and substantial repair; and at the end, or sooner determination of the said term, shall leave the same in such good and substantial repair for the benefit of the said (*lessor*), his heirs and assigns; and all such engines, rollers and rails, to be taken by the said (*lessor*), his heirs or assigns, if he or they shall elect so to do, at a fair valuation; which, in case of dispute as to the amount of value, shall be settled by the arbitration of two referees or their umpire in the usual manner. AND in case the said (*lessor*), his heirs or assigns, shall decline to take the said engines, rollers and rails, it shall be lawful for the said (*lessees*), their executors, administrators or assigns, at any time before the expiration of three calendar months from the determination of the said term, to remove the said engines, rollers and rails from off the said demised premises, for their own use and benefit.

To keep and
leave the
railway in good
and substantial
repair.

Lessor to be
entitled, if he
pleases, to take
machinery at a
valuation.

In case lessor
shall decline to
take machinery
at a valuation.
lessees are
authorized to
remove it for
their own
benefit.

(b) If the lessees are to be restricted from permitting other persons to use the railway, insert the following clause:—

A. AND ALSO shall not nor will, at any time during the said term, permit or suffer any other person or persons, except their own servants or workmen, or other persons in their actual employ, to use the said railway, without an authority in writing first obtained from the said (*lessor*), his heirs or assigns, or his or their agent or agents for the time being.

Not to suffer
other persons to
use the railway
without the
written
authority of the
lessor.

No. XIII.

*Grant of Pieces
of Ground
for purpose of
constructing
Railway leading
to and from a
Mine.*

Power of
distress.

13. PROVIDED ALWAYS, that in case the yearly rent hereby reserved, or any part of the same, shall be in arrear for the space of twenty-one days next after any of the said days hereinbefore appointed for payment thereof, THEN, and in such case, and so often as the same shall happen, it shall be lawful for the said (*lessor*), his heirs or assigns, to distrain upon all or any part of the premises hereby granted and demised for the same rent, and all arrears thereof, and the goods, chattels, effects, and property of the said (*lessees*), their executors, administrators or assigns, then and there found, to take, carry away, impound, and dispose of in the same way as landlords are authorized to do for rent arrear upon ordinary leases. TO THE INTENT that the said yearly rent, or so much thereof as shall be then due, and all costs occasioned by the nonpayment thereof, shall be thereby and therewith fully satisfied and discharged.

Proviso for
avoiding the
grant for
breach of cove-
nant by lessee.

14. PROVIDED ALSO, that in case the yearly rent hereby reserved, or any part thereof, shall be in arrear for the space of forty days next after any of the said days hereinbefore appointed for payment thereof being demanded, or if breach shall happen to be made in all, any, or either of the covenants hereinbefore contained, on the part of the said (*lessees*), their executors, administrators, or assigns, to be observed and performed, THEN and in such case it shall be lawful for the said (*lessor*), his heirs and assigns, by notice in writing under his hand, delivered to the said (*lessees*), or either of them, their or either of their executors, administrators or assigns, or left at their, his, or her last or usual place of abode or business in England, to determine this present grant and demise, and the right, liberty, license, and authority hereby given, and to declare these presents, and every clause, matter, and thing herein contained to be absolutely void, except with respect to the remedies of the said (*lessor*), his heirs, or assigns, for any prior breach of any covenant herein contained.

IN WITNESS, &c.

No. XIV.

GRANT OF A RIGHT OF WAY TO A MINE FOR A TERM OF
TWENTY-ONE YEARS.

- | | |
|--|---|
| 1. Parties.
2. Testatum.
3. Habendum.
4. For peaceable enjoyment by grantor.
5. To do as little damage as possible to the railway. | 6. To contribute to the repairs.
7. Covenants from grantor that he has good right to demise, and for peaceable enjoyment.
8. To keep railway in repair.
9. To pay rates and taxes. |
|--|---|

1. THIS INDENTURE, made the day of , A.D. 185 , Parties.
 BETWEEN (*grantor*), of, &c., of the one part, and (*grantee*), of, &c.,
 of the other part.

2. WITNESSETH, that in consideration of the sum of 100*l.* Testatum.
 sterling, paid by the said (*grantee*) to the said (*grantor*) on the
 execution hereof, the receipt of which is hereby acknowledged ;
 and also in consideration of the rents and covenants hereby
 reserved and contained, on the part of the said (*grantee*), his
 executors, administrators and assigns, to be paid and performed,
 HE, the said (*grantor*), DOth by these presents grant and demise
 unto the said (*grantee*), his executors, administrators and assigns,
 full, free, and irrevocable right, liberty, licence, power and autho-
 rity for himself and themselves, his and their agent or agents,
 workmen and servants, and all other persons, for the benefit and
 advantage of the said (*grantee*), his executors, administrators or
 assigns, from time to time and at all times hereafter [and whether

No. XIV. *Lease or Grant of a Right of Way to a Mine for a Term of Twenty-one Years.* by day or by night, (a) to use and employ, for the purposes hereinafter mentioned], ALL that railway extending in one continued line from to [INSERT *particular description of way*]; TOGETHER with full and free right, liberty, licence, power and authority, for him and them, to go over and return, pass and repass along the said hereinbefore mentioned line of railway (b) with carts, waggons, wains, and carriages of every kind and description, either drawn by horses or propelled by steam or other engines, or by any other power or means whatsoever; and to convey all such ores, metals and minerals, as shall from time to time be raised or gotten by the said (*grantee*), his partners, co-adventurers, executors, administrators or assigns, from out of ALL that mine [INSERT *particular description of mine*]; AND ALSO to convey to the said mine all such coals, timber, and other materials, articles and things, as may be required, or as may be deemed necessary for carrying on the workings of the said mine; TOGETHER with all privileges, appurtenances and advantages, to the said right of way belonging or appertaining.

Habendum.

3. TO HAVE, HOLD, USE AND ENJOY the said right, liberty, licence, power and authority, and all and singular other the premises hereby demised, unto the said (*grantee*), his executors, administrators and assigns, from the 29th day of September last, for and during and unto the full end and term of twenty-one years thenceforth next ensuing. [INSERT *reddendum; and also covenant for payment of rent, as in last precedent, clauses 6, 7, p. 414.*]

For peaceable enjoyment by grantor.

4. AND ALSO shall and will, from time to time and at all times

(a) If the right is to be restricted to certain hours of the day, substitute for the words within brackets above:—

“to use and employ, for the purposes hereinafter mentioned, at all times between the hours of five in the morning and eight in the evening.”

(b) If the right is to be restricted as to time, insert here—

“within the hours aforesaid.”

during the said term, permit and suffer the said (*grantor*), his heirs or assigns, and his and their agent or agents, and all other persons duly authorized by him or them, peaceably and quietly to use and enjoy the said railway in common with him the said (*grantee*), his executors, administrators and assigns, without hindrance or denial, and with as little interruption as possible.

No. XIV.

*Lease or Grant
of a Right of
Way to a Mine
for a Term
of Twenty-one
Years.*

5. AND ALSO shall and will at all times do as little damage as possible to the said railway, and the embankments, sides, fences, walls, and drains thereof, or to any buildings or other works thereunto belonging.

To do as little
damage as
possible to the
railway.

6. AND ALSO shall and will, from time to time during the said term, except in the last year thereof, contribute to a just proportion of the expenses to be incurred in laying new rails, or any other matters or things that may be required for keeping the said railway in proper and substantial repair, and also the sides, embankments, fences, walls and drains thereunto belonging, and also so much of the engines, rollers, ropes, buildings, machinery, and works connected therewith, as shall be used and enjoyed by the said (*grantee*), his partners, co-adventurers, executors, administrators and assigns, in common with the said (*grantor*), his heirs or assigns, or any other person or persons whomsoever. [INSERT power of distress; and proviso for determining term, as in last precedent, clauses 13, 14, p. 415.]

To contribute to
the repairs.

7. AND the said (*grantor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*grantee*), his executors, administrators and assigns, that he the said (*grantor*) now hath in himself good right to grant the said right of way hereby demised unto the said (*grantee*), his executors, administrators and assigns, for the term hereby granted; AND ALSO that the said right of way shall or may be held and enjoyed accordingly, without any unnecessary hindrance, interruption or disturbance, of or by the said (*grantor*), his heirs or assigns, or any other person or persons whomsoever.

Covenants from
grantor that he
has good right
to demise, and
for peaceable
enjoyment.

8. AND ALSO shall and will, from time to time and at all times during the said term, keep and preserve the said railway, rails,

To keep railway
in repair.

No. XIV. sides, embankments, walls, and drains thereunto belonging, and the
Lease or Grant of a Right of Way to a Mine for a Term of Twenty-one Years. engines, rollers, ropes, buildings, machinery, and works connected therewith, hereby authorized to be used and enjoyed in common as aforesaid, in proper and substantial repair, and in all respects fit for the exercise and purposes of the right, liberty, licence, power and authority, hereby granted and demised.

To pay rates
and taxes.

9. AND ALSO shall and will pay and discharge all rates, taxes, and impositions whatsoever, which, during the said term hereby granted, shall be charged or imposed in respect of the said premises hereby demised as aforesaid.

IN WITNESS, &c.

No. XV.

CONVEYANCE IN PURSUANCE OF THE ACT TO FACILITATE
THE CONVEYANCE OF WORKHOUSES, AND OTHER PARISH
PROPERTY. (a)

THIS DEED, made the day of A.D. 18 , by
virtue of an act passed in the fifth and sixth years of the reign of
King William the Fourth, intituled "An Act to facilitate the
Conveyance of Workhouses and other Property of Parishes, and
of Incorporations or Unions of Parishes in England and Wales;"

(a) It would seem that a lease made in pursuance of the above-mentioned Practical
act is not liable to stamp duty, still the point is not sufficiently clear to be relied remarks.
on in practice, and the safer plan will be to affix an *ad valorem* stamp propor-
tioned to the amount of the purchase money (see 1 Platt Leases, 558.)

The stat. 5 & 6 Will. 4, c. 69, above referred to, empowers the guardians Power to
of any parish or union, and the overseers of any parish not under the overseers and
management of a board of guardians, or the guardians or trustees of any dis- guardians of the
solved union, or the person or persons who were the guardians or trustees of poor, to sell,
any dissolved union at the time of its dissolution, or a majority of such guar- purchase and
dians, trustees, or persons, if more than one, with the approbation, and subject dispose of
to the rules, orders and regulations of the Poor-Law Commissioners to sell, workhouses, &c.
exchange, let, or otherwise dispose of any workhouses, tenements, buildings,
lands, effects, and other property belonging to any such parish or union, or
vested in trustees or feoffees in trust for such parish or union, or for the parish-
ioners, rate-payers, or inhabitants thereof, or which then belonged, or then for-
merly did belong, to any dissolved union; but with a proviso that no such sale
or exchange, or letting, should take place except with the consent of a majority
of the rate-payers of such parish, and of the owners of property therein, entitled
to vote under and by virtue of the act of 4 & 5 Will. 4, c. 76 And with a fur-
ther proviso, that every sale and exchange or lease of any such workhouse, tene-
ment, buildings, land, or other property, which might have been made before
the passing of the act 5 & 6 Will. 4, c. 69, with the consent in writing of the
Poor-Law Commissioners, should be as valid as if the same had been directed
by their order under the authority thereof; and that all moneys or rents which
had become, or should become payable in respect of such sale, exchange, or
lease, and had not been applied, should be applied in the same manner as such
moneys or rents would have been applicable if such sale or exchange or lease
had not been made thereunder. And it was moreover provided that all powers
and authorities by the act 59 Geo. 3, c. 12, given to churchwardens and over-
seers of the poor for taking land or ground into their hands, and for purchasing,
hiring, or taking on lease any land; and all the powers and authorities contained
in the acts of 1 & 2 Will. 4, c. 42, 1 & 2 Will. 4, c. 59, and 2 Will. 4, c. 42,
should in future be exercised (under the control, and subject to the rules, orders,
and regulations of the Poor-Law Commissioners,) by the overseers of the poor in
any parish not under the management of a board of guardians, and by the

No such sale,
&c., to take
place, except
with the consent
of a majority
of the rate-
payers.

Every sale, &c.,
which might
have been made
before the pass-
ing of the act
with the consent
of the Poor Law
Commissioners,
will be valid.

Powers given to
churchwardens
and overseers by
stat. 59 Geo. 3,
c. 12; 1 & 2
Will. 4, c. 42;
1 & 2 Will. 4,
c. 59; and

No. XV. and under the direction [*or with the approbation*] of the Poor-Law Commissioners for England and Wales, testified by their seal being hereunto affixed, WITNESSETH that (*A. B.*), in consideration of the sum of £ sterling, paid to him [*or into the*]

Form of a Conveyance or Lease of Work-houses and other Property of Parishes, &c.

2 Will. 4, c. 42, guardians of the poor of any union or parish formed or established by virtue of in future to be any statute or local act: (sect. 4.)

exercised by the overseers and guardians. And for the purpose of simplifying the instruments of assurance of property under the act, it is moreover provided (sect. 3), that every conveyance, according to the authority of the act, might be made according to the form set forth in the schedule thereto annexed, or in such other form as the Poor-Law Commissioners should direct, or as near thereto as the number of parties, the nature of the interests, and the circumstances of the case would admit; and should, when executed by the conveying parties, be valid and effectual in the law, without livery of seisin being made, or any bargain and sale to vest possession being executed; and that every conveyance or instrument made under the authority of the act, should, when signed by the conveying parties thereto, be transmitted to the Poor-Law Commissioners, who should, if they should approve thereof, signify such approval by sealing or stamping the same with their seal. And for preserving evidence of such instruments, the commissioners were ordered to keep a register properly indexed, in which they should insert copies or memorials of such deeds or instruments of which they should so approve, and of such orders of appropriation of property as were thereinbefore mentioned; and it is provided that all such copies or memorials, or copies thereof, purporting to be sealed and stamped with the seal of the commissioners, should be received as evidence of the instruments respectively of which they should purport to be copies or memorials.

Mode of conveyance.

Stat. 5 Vict. c. 16.

Some doubts having arisen as to the meaning and extent of the provision of the 3rd section of the above act, it was, by statute 5 Vict. c. 16, s. 2, declared that such provisions shall be deemed to have authorized and to authorize the sale, exchange, letting and disposal by the guardians of a union formed, or to be formed, by the commissioners, of any workhouse, tenements, buildings, lands, effects, or other property belonging to any parish, which shall be comprised in the said union; and in cases of the sale, exchange, letting and disposing of workhouses, tenements, buildings, lands, effects and other property, belonging to a dissolved union, to have applied, and to apply to a majority of the persons who were the last acting guardians previous to the dissolution of such union: provided that nothing therein contained shall be deemed to render valid, or to authorize the sale, exchange, letting, or other disposition of any property which shall have been given or bequeathed by way of charitable donation, or shall have been allotted in right of some charitable donation or otherwise for the poor of any parish, and not for the general benefit of the rate-payers, parishioners, or inhabitants of such parish; nor to dispense with the consent of the rate-payers and owners of the property required by 5 & 6 Will. 4, c. 69, to all sales, exchanges, lettings, or other dispositions of property belonging to any parish, except in the case next hereinafter provided: (sect. 2.)

Where several parishes are jointly interested in parish property, commissioners are empowered to order the same to be sold.

It then proceeds to provide that where several parishes shall have been, or shall be, jointly interested in any workhouse, tenements, buildings, lands, whether freehold, copyhold, or customary tenure, effects, or other property it shall be deemed to have been and shall be lawful for the said commissioners, upon the application of the overseers of the major part of such parishes, and with the consent of the rate-payers and owners of the property in the major part of such parishes, to be ascertained in the manner directed by the said act of 5 & 6 Will. 4, c. 69, to order the same to be sold, let, exchanged, or disposed of by the guardians of the union in which such parishes, or the greater part thereof, shall be situate, in such manner, and subject to such rules, orders and regulations, as the commissioners shall deem fit; and that it shall be deemed to have

Bank of England] by (C. D.), DOth grant and convey [*if a lease, substitute "demise,"*] ALL, &c. [HERE DESCRIBE *parcels*]; and all the right, title and interest of the said (A. B.) in and to the same, and every part thereof, unto and to be holden by the said (C. D.), his heirs and assigns.(b)

No. XIV.

*Form of a
Conveyance or
Lease of Work-
houses and
other Property
of Parishes, &c.*

IN WITNESS whereof the said (A. B.) and (C. D.) have hereunto set their hands and seals.

Witness, E. F.

A. B. (L.S.)

C. D. (L.S.)



Approved and registered the day of

been, and to be, lawful for the commissioners to direct the application arising from such produce or sale, letting, or disposition in the same manner, and for the same purposes, as the produce arising from the sales of property belonging to other parishes might be applied to; provided that where any conveyance by way of sale, lease, exchange, disposition, or otherwise, of any property belonging to a parish or union, whether dissolved or not, shall have been or shall thereafter be, made by guardians of any existing union, or a majority of the last acting guardians of any dissolved union, under the order of the commissioners, the same shall be deemed to have been and to be valid for all the purposes of such conveyance, although the legal estate in such property shall be, or shall be presumed to be, outstanding in some trustee or trustees, who shall not have joined in such conveyance.

The stat. 10 & 11 Vict. c. 109, under which commissioners are appointed in the place of those whose commissions expired under the former enactments (4 & 5 Will. 4, c. 76), transfers to the former all the powers and duties of the late commissioners (sect. 10); and also directs that they shall cause a seal to be made for their use, which shall have the same power and effect as the seal of the Poor-Law Commissioners then had; and that documents purporting to be sealed or stamped therewith shall be received in evidence in like manner and with the like effect as documents sealed or stamped with the seal of the Poor-Law Commissioners were then received in evidence: (sect. 5.)

Powers of former Poor-Law Commissioners transferred to commissioners appointed under stat. 10 & 11 Vict. c. 109.

(b) The above form, which follows the words of the act, seems rather adapted to an absolute conveyance than to a lease; the limitation being to the party, his heirs and assigns, which is only applicable to a lease of a freehold interest, and is not adapted to a lease for years, which ought always to be limited to the party, his executors, administrators and assigns. But though the above limitation is technically incorrect, as far as relates to leases for years, it will not affect the transmission of the property; for estates for years, though limited to a man and his heirs, or though no words of limitation are annexed to his estate, will, in either case, devolve upon his personal representatives.

Practical observations.

No. XVI.

 FORM OF AN EXCHANGE IN PURSUANCE OF THE ACT FOR
 FACILITATING THE CONVEYANCE OF WORKHOUSES, &c.

Grant and
conveyance of
lands given in
exchange.

THIS DEED, made the day of A.D. 18 , by virtue of an act passed in the fifth and sixth years of the reign of King William the Fourth, intituled "An Act to facilitate the Conveyance of Workhouses and other Property of parishes, and of Incorporations or Unions of Parishes in England and Wales;" and under the direction [*or with the approbation*] of the Poor-Law Commissioners for England and Wales (testified by their seal being hereunto affixed), WITNESSETH that (*A. B.*) of, &c., DOth grant and convey unto (*C. D.*) of, &c., ALL, [*HERE DESCRIBE parcels given in exchange,*] in exchange for the hereditaments hereinafter conveyed. TO THE INTENT that the said hereditaments above conveyed may be held and enjoyed by the said (*C. D.*), and the person or persons who for the time being would have been entitled to the hereditaments hereinafter conveyed, if this present exchange had not been made; and shall be and become subject to such and the same uses, trusts, powers, conditions, limitations, restrictions, charges and incumbrances as the same hereditaments hereinafter conveyed now are, or may be, or, but for this present exchange, would have been, subject or liable to.

Grant and
conveyance of
lands taken in
exchange.

AND THIS DEED FURTHER WITNESSETH, that in pursuance of the said act, and under the said direction [*or approbation*] of the said Poor-Law Commissioners, the said (*C. D.*), doth grant and convey unto the said (*A. B.*), ALL, &c. [*HERE DESCRIBE parcels taken in exchange,*] in lieu of, and in exchange for, the hereditaments hereinbefore firstly conveyed. TO THE INTENT that the

hereditaments lastly hereinbefore conveyed, may be held and enjoyed by the said (*A. B.*), and the person or persons who for the time being would have been entitled to the hereditaments firstly hereinbefore conveyed, if this present exchange had not been made, and shall be and become subject to such and the same uses, trusts, powers, conditions, limitations, restrictions, charges and incumbrances as the same hereditaments now are, or may be, or, but for this present exchange, would have been, subject or liable to.

No. XVI.

*Form of an
Exchange in
pursuance of the
Act for
facilitating the
Conveyance of
Workhouses,
&c.*

IN WITNESS whereof the said (*A. B.*) and (*C. D.*) have hereunto set their hands and seals.

Witness, *E. F.**A. B.* (L.S.)*C. D.* (L.S.)

Approved and registered the

day of

No. XVII.

FORM OF SECURITY UNDER THE ACT FOR FACILITATING THE
CONVEYANCES OF WORKHOUSES.

THIS DEED, made the day of A.D. 18 , by virtue of an act passed in the fifth and sixth years of the reign of King William the Fourth, intituled (*the title of the act*), and under the direction [*or with the approbation*] of the Poor-Law Commissioners for England and Wales (testified by their seal being hereunto affixed), WITNESSETH that (*A. B., C. D., E. F., and G. H.*), being the majority of the guardians of the poor for the union [*or the parish of ,*] in consideration of the sum of £ sterling, to them in hand paid by (*Y. Z.*) of , for the purpose of purchasing, building, erecting, repairing, fitting up or furnishing a workhouse for the union [*or parish*], and for providing sufficient stock and utensils for that purpose [*or in consideration of the conveyance or assurance of, &c., as the case may be,*] do hereby charge the poor rates of the parishes of the said union [*or parish*] with the payment of the principal sum of £ , by the instalments following [*naming them,*] together with interest on the principal which shall from time to time remain due, after the rate of £ per centum, to be payable half-yearly to the said (*Y. Z.*), his executors, administrators and assigns.

Witness, *L. M.**A. B.**C. D.**E. F.**G. H.*

Approved and registered the day of .

No. XVIII.

FORM OF TRANSFER OF SECURITY.

THIS DEED, made the day of A.D. 18 , by virtue of an act passed in the fifth and sixth years of the reign of King William the Fourth, intituled (*the title of the act*), and [*if the guardians or overseers of any parish or union are the parties transferring or accepting the security, then add*] under the direction [*or with the approbation*] of the Poor-Law Commissioners for England and Wales (testified by their seal being hereunto affixed), WITNESSETH that (Y. Z.) of , doth transfer the security [*describing it*], with all right and title as to the principal money thereby secured, and to all the interest now due or hereafter to be due thereon, unto (V. W.), his executors, administrators and assigns.

Y. Z.

V. W.



PART III.

AGREEMENT FOR LEASES, MINING SETTS, AND
LICENCES, AND ATTORNMENTS.

SECTION I.

AGREEMENTS FOR LEASES.

- No. I.—AGREEMENT FOR A LEASE FOR A YEAR, AND SO FROM YEAR TO YEAR, DETERMINABLE ON A SIX MONTHS' NOTICE, EITHER BY LANDLORD OR TENANT.
- No. II.—AGREEMENT FOR THE LEASE OF A DWELLING-HOUSE, SITUATE IN A BOROUGH TOWN, TO CONTAIN THE USUAL AND SOME SPECIAL COVENANTS.
- No. III.—AGREEMENT FOR LETTING A HOUSE FOR THREE YEARS, WITH USUAL STIPULATIONS.
- No. IV.—TERMS FOR LETTING A FARM.
- No. V.—AGREEMENT TO TAKE A FURNISHED HOUSE FOR A YEAR, THE LANDLORD TO PAY ALL THE RATES AND TAXES, WITH A PROVISIO FOR DETERMINING THE TERM IN CASE OF NON-PAYMENT OF RENT, OR LESSEE PERMITTING THE FURNITURE TO BE TAKEN IN EXECUTION.
- No. VI.—AGREEMENT FOR THE LEASE OF COPYHOLD LANDS.
- No. VII.—FORM OF LICENCE TO DEMISE COPYHOLDS.
- No. VIII.—AGREEMENT OR LICENCE AUTHORIZING A SEARCH FOR MINERALS FOR THE SPACE OF ONE YEAR.

No. I.

AGREEMENT FOR A LEASE FOR A YEAR, AND SO FROM YEAR TO YEAR (DETERMINABLE ON A SIX MONTHS' NOTICE BY EITHER LANDLORD OR TENANT.) (a)

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| 1. Parties.
2. Agreement to let for a year, and so from year to year, determinable on six months' notice.
3. Rent to be payable quarterly. | 4. Tenant to keep and leave premises in repair.
5. Instrument to operate as an agreement and not as a lease. |
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[Stamp, 2s. 6d.] See note (b), 432.

1. ARTICLES OF AGREEMENT made and entered into Parties.
 this 29th day of September, A.D. 18 , BETWEEN (*lessor*) of, &c.,
 for himself, his heirs, executors and administrators, of the one part;
 and (*lessee*) of, &c., for himself, his executors, administrators and
 assigns, of the other part.

2. THE said (*lessor*) BOTH hereby agree to let, and the said Agreement to
 (*lessee*) to take, all that messuage, tenement or dwelling-house, let for a year,
 with the outhouses, garden and appurtenances thereunto belonging, and so from
 year to year,
 determinable on

(a) At the present day, on account of the many inconveniences with which Inclination of
 the old tenancy at will was attended, the courts are inclined to construe every the courts to
 demise, where no certain term is mentioned, as a term from year to year, if they construe every
 can find any reasonable foundation for so doing (*Timmins v. Rawlinson*, 3 Bur. 1603); as if the lessor accepts yearly rent, or rent measured by any aliquot part no certain term
 of a year, it being considered as more advantageous to the parties that such is mentioned,
 demises should be construed as demises from year to year so long as it pleases both parties, for in that case one party cannot determine the tenancy without as a tenancy
 giving a reasonable notice to quit to the other. This notice is in most counties from year to
 six months, and it must in all cases expire on that part of the year when the year.

No. I.

Agreement for a Lease for a Year, and so from Year to Year, determinable on Six Months' Notice.

six months' notice.

What in legal construction will be considered a sufficient six months' notice.

Circumstance of rent being reserved quarterly will not vary the rule with respect to six months' notice.

No distinction between houses and land with respect to determination of tenancy.

Lessee holding over after the expiration of his term will become tenant from year to year.

Demise not for one year only,

situate and being No. 19, in — street, in the parish of S —, in the borough of P —, in the county of S —, late in the occupation of (R. T.) Esquire, but now untenanted, for the term of

tenancy commenced; therefore, if the tenant holds from Michaelmas, the notice must be given half a year before Michaelmas; if from Lady-day, half a year before Lady-day; for if a notice to quit at Midsummer be given by a tenant holding at Michaelmas, or *vice versa*, it will be insufficient. If a tenant dies before the expiration of the term, his personal representatives will be entitled to the same notice as the tenant himself would have been entitled to if still living; and, before the expiration of that time, the landlord cannot maintain ejectment, either against the tenant or his representatives, unless he has attorned to some other person, or done some act which renders no previous notice requisite: (*Oakapple d. Green v. Capons*, 4 T. R. 361.)

By legal computation, half a year contains 182 days, for the odd hours are rejected; but as there are certain periods from which the half year is usually computed, a notice referring to those periods will be sufficient; hence, a notice served on the 28th of September to quit on the 25th of March was held good, though that period only contains 179 days. And in the case of *Doe d. Harrop v. Green* (5 Esp. N. P. C. 199), Lord Ellenborough, C. J. said, that a notice on the 29th day of September to quit at Lady-day following, had been holden good.

There is not any distinction between houses and lands with respect to this notice, nor will the circumstance of the rent being reserved quarterly vary the rule. And even if a house be let from year to year, to quit at a quarter's notice, the notice must be given to quit at the end of a quarter expiring with the year of the tenancy: (*Doe d. Pitcher v. Donovan*, 3 Camp. N. P. C. 510; 1 Taunt. 555.) But if the demise be for one year only, and then to continue afterwards, and quit at a quarter's notice, a quarter's notice ending at any time will be sufficient: (Per Chambre, C. J. in *Doe d. Pitcher*, *sup.*) And in like manner, although a tenancy from year to year, commencing from Michaelmas, can only be determined by a notice to quit expiring at Michaelmas, this will not preclude a landlord or tenant from stipulating otherwise, and agreeing to determine the term by a six months' notice expiring at any other time of the year. And where premises are taken under an agreement that the tenant is always to quit at three months' notice, this constitutes a quarterly tenancy, which may be determined by a three months' notice to quit, expiring at the same time of the year it commences, or on any corresponding quarter day. So where a house is taken by the month, a month's notice will be sufficient: (*Doe d. Parry v. Hazell*, 1 Esp. N. P. C. 84.) If a tenant, under an agreement to quit at three months' notice, enters in the middle of one of the usual quarters, if there appears to be no agreement to the contrary, he will be presumed to hold from the day on which he entered, and the tenancy can only be determined by a notice to quit expiring on that day of the year, or on some other quarter day calculated from thence: (*Kemp v. Dovett*, 3 Camp. N. P. C. 510.)

If a lessee, after the determination of his lease, holds over and pays rent, the law presumes an agreement between the parties that the tenant shall continue in possession according to the terms of the original demise, so far as they are consistent with a tenancy from year to year, in which case, if the landlord means to determine the tenancy, he must give the tenant half a year's notice to quit, corresponding with the time of the original taking: (*Castleton v. Samuel*, 5 Esp. 175.) And if such tenant assign the premises, the assignee will be entitled to the same notice: (*Doe d. Jordan v. Warde*, 4 H. Blackst. 97.) Again, where a tenant holds under a void lease, under the Statute of Frauds (statute 29 Car. 2, c. 3, s. 1), as where a parol lease is granted for seven years, if the landlord wishes to determine the lease, he can only do so by a notice to quit, expiring at that part of the year at which the tenancy was to have determined under that lease: (*Doe dem. Rigge v. Bell*, 5 T. R. 471.)

A demise, not for one year only, but from year to year, enures as a demise for

one year, from the day of the date hereof, and so on from year to year, until the tenancy shall be determined by six calendar months' previous notice in writing by either party to the other, such

No. L

Agreement for a Lease for a Year, and so from Year to Year, determinable on Six Months' Notice.

two years at least; consequently, the tenant cannot be ejected after a notice to quit at the expiration of the first year: (*Denn v. Cartwright*, 4 East, 31.) In a case, however, in which furnished apartments were let for twelve months certain, and six months notice afterwards, Lord Ellenborough, C. J., was of opinion that the defendant was only bound to remain the twelve months certain, as the word "certain" seemed only to apply to the first twelve months, which showed that everything afterwards was uncertain, and that therefore the tenant was at liberty to quit at the end of the year, on giving six months' previous notice: (*Thompson v. Moberley*, 3 Camp. N. P. C. 573.)

It must also be borne in mind, that although the inclination of the courts is to construe any tenancy, where no certain term is mentioned, as a tenancy from year to year, yet this will only be the case where they find some reasonable foundation for so doing, and not where a mere tenancy at will seems to have been in the contemplation of the parties. Hence, in *Richardson v. Langridge* (4 Taunt. 128), the agreement was holden to constitute a tenancy at will, the premises being let so long as both parties liked, and a compensation reserved accruing *de die in diem*, and not referable to a year, or any aliquot part of a year.

So where a person has been let into possession pending a treaty for a purchase, or a lease (*Goodtitle and Galloways v. Herbert*, 4 T. R. 680; *Doe dem. Warner v. Browne*, 8 East, 165; *Doe dem. Newby v. Jackson*, 1 B. & C. 448); or where, having been tenant for a term which has expired, he continues in possession negotiating for a new lease: (*Doe dem. Rawlings v. Brune*, 10 East, 261; *Doe dem. Foley v. Richardson*, 11 East, 56.) These modern tenancies at will differ materially from the old tenancy at will, so called, being scarcely distinguishable from a mere permissive occupation of the tenant, independent of the relation of landlord and tenant. Still, in all these and the like cases, the party being lawfully in possession cannot be ejected until such lawful possession is determined, either by demand of the possession, breaking off the treaty, or otherwise; and if in any of these cases the landlord receive rent whilst the party is so in possession, or does any act amounting to an acknowledgment of a subsisting tenancy, a tenancy from year to year will be created thereby: (*Doe dem. Rigge v. Bell*, 7 T. R. 471; *Thunder dem. Weaver v. Belcher*, 3 East, 449; *Warner v. Brown*, 8 East, 135.) Still, in order to raise an implied tenancy from the receipt of rent, it must appear that the rent was paid and received as between landlord and tenant, so as to raise a presumption of agreement of a tenancy from year to year, and not as in the case of a conventional rent, or where the payment is made with reference to a supposed tenancy of another kind: (*Right v. Bowden*, 8 East, 360.) Hence the acceptance of an ancient rent of 1*l.* 18*s.* 6*d.* from a lessee in possession under a void lease granted by a tenant for life under a power, the rack rent of which was 30*l.* a year, was held not to raise an implied tenancy from year to year from the receipt of the rent. Still the receipt of rent is so far a recognition of a lawful possession that the party will be entitled to some notice to quit before ejectment can be brought against him, so as to make him a trespasser, if not as tenant from year to year, at least as tenant at will: (*Doe dem. Brune v. Rawlings*, 10 East, 261; see also *Roe dem. Blair v. Street*, 4 Nev. & Man. 42; *Daniels v. Davidson*, 6 Ves. 252; *Doe dem. Price v. Price*, 9 Bing. 359; *Doe dem. Bennett v. Turner*, 7 Mees. & Wels. 226; 9 *ib.* 643; *Doe dem. Burgess v. Thompson*, 1 Nev. & Per. 215; *Doe dem. Rogers v. Pulley*, 2 Bing. N. C. 749.) By the custom of London, a tenant at will under 40*s.* rent, shall not be turned out without a quarter's warning: (*Detick v. Saunders*, 2 Sid. 20.)

The doctrine relative to notices to quit is only applicable to those tenancies where the time of quitting is not agreed upon between the parties: hence, where

but from year to year, is a demise for two years at least.

Court will not construe any tenancy to be a tenancy from year to year, unless they can find some reasonable ground for so doing.

Possession acquired under a treaty for a lease or purchase, will not constitute a tenancy from year to year.

Distinction between the modern and ancient tenancies at will.

Custom of London.

Doctrine applicable to notices

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Agreement for a Lease for a Year, and so from Year to Year, determinable on Six Months' Notice.

Rent to be paid quarterly.

notice to expire either at Michaelmas or Lady-day; which notice shall in all cases determine the current year of the tenancy.

3. THAT the rent to be paid for the said premises shall be 90*l.* a year, without deduction, except on account of the landlord's property and income tax, and shall be payable by four equal quarterly payments, on the 25th day of December, the 25th day of March, the 24th day of June, and the 29th day of September; the first quarterly payment to be made on the 25th day of December next.

Tenant to keep and leave premises in repair.

4. AND ALSO that the said (*lessee*) shall keep and leave the said premises in as good a state of repair and condition as the same are now in, reasonable wear and tear, and accidents by fire, flood, storm or tempest only excepted.

Instrument to operate as an agreement, and not as a lease.

5. AND LASTLY, it is hereby agreed that this instrument shall operate as an agreement for a lease, and not as a lease. (*v*)

to quit, includes those cases only where no time of quitting is agreed upon.

a lease is determinable on a certain event, or fixed time, it is not necessary to give any previous notice, for both parties are already apprised of the determination of the term; therefore, if the tenant continues to hold over after such expiration, he will be deemed a trespasser, and ejectionment may be brought against him without any previous notice: (*Messenger v. Armstrong*, 1 T. R. 53.) So if a party obtains possession of a house, and afterwards a negotiation takes place for a lease, upon the terms of which the parties eventually differ, or the tenant refuses to execute the lease, then, unless there be a stipulation that, in case the lease is not executed, the tenant shall hold for one year certain, no notice to quit will be requisite to determine the tenancy: (*Doe dem. Knight v. Quigley*, Camp. N. P. C. 505; and see *Doe dem. Leeson v. Sayer*, 3 Camp. N. P. C. 8; *Doe dem. Broomfield v. Smith*, 6 East, 530.)

Practical observations on the Stamp Acts relative to agreements for leases.

(b) Some important alterations in the law relative to the stamps of agreements for leases were effected by the statute of 7 & 8 Vict. c. 21, by the 16th schedule of which a duty of 2*s.* 6*d.* is substituted for that of 20*s.*, under the head of AGREEMENTS, in the schedule of the General Stamp Act (55 Geo. 3, c. 184.) This alteration, it must, however, be remembered, relates to those agreements only, to which, under the 55 Geo. 3, c. 184, a 20*s.* stamp was applicable, and did not, therefore, comprehend agreements exceeding fifteen common law folios. Neither, under the act 7 Vict. c. 21, will a 2*s.* 6*d.* stamp be sufficient, where divers letters are offered in evidence to support an agreement, notwithstanding the contents of all the letters should be less than fifteen common law folios; for, although under the 55 Geo. 3, it is sufficient if any one of such letters be stamped, yet, that act expressly directs that a 1*l.* 15*s.* stamp shall be employed for that purpose; and the act 7 & 8 Vict. only permits the 2*s.* 6*d.* stamp to be used where a duty of 1*l.* only was chargeable under the preceding enactment. But now, by the statute 13 & 14 Vict. c. 97, every agreement, where the matter thereof shall be of the value of 20*l.* or upwards, is charged with a duty of 2*s.* 6*d.*; and where the same shall contain 2,160 words, or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further progressive duty of 2*s.* 6*d.*

Practical remarks.

(c) This clause is a less important one than formerly, when questions were continually arising as to whether written instruments relating to the letting of

IN WITNESS whereof the said parties hereunto have set their hands (d) the day and year first above written.

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Agreement for a Lease for a Year, and so from Year to Year, determinable on Six Months' Notice.

property were actually leases, or mere agreements for leases. This doctrine is now chiefly confined to instruments already in existence; for, with respect to those entered into subsequently to the 1st day of October, 1845, the statute 8 & 9 Vict. c. 106, s. 3, enacts, that a lease required by law to be in writing of any tenements or hereditaments made after that day shall be void at law, unless made by deed, so that no written instrument made subsequently to the period above mentioned, however it may be worded, can be construed as a lease, except it be under seal; still this will not prevent an instrument, although under seal, from being construed as an agreement, where, from the terms in which it is expressed, it is evident the parties intended it should have that operation: (1 Hughes Pract. Sales, 510, 511, 2nd edit.)

(d) The 4th section of the Statute of Frauds enacts, that no action shall be brought to charge any person upon any agreement made upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

What will amount to a valid signature.

With respect to what will constitute a sufficient signing within the Statute of Frauds, it is not absolutely necessary that the signing should be contemporaneous with the agreement. It is sufficient at whatever time made, if adopted by the party afterwards, and then anything under his hand, stating that he has entered into the agreement, will be sufficient. Thus an indorsement by the defendant on the draught of a lease of the premises in question which had been perused and altered by his own attorney in the following terms:—"I hereby request Mr. Shippey to endeavour to let the premises to some other person, as it will be inconvenient for me to perform my agreement for them, and for so doing this shall be sufficient authority,—J. DERRISON," was determined to be a valid contract, though it was admitted that at the time when an agreement for a lease was entered into it was not reduced in writing, nor was any memorandum made of it: (*Shippey v. Derrison*, 5 Esp. N. P. C. 190; see also *Powell v. Dillon*, 2 Ball & B. 416; *Verlander v. Codd*, 1 Turn. & Russ. 352.) But merely altering a draught, though the name of the party be inserted in the body of it, will not be a sufficient signature within the Statute of Frauds: (29 Car. 2, c. 3, ss. 1, 4.) Thus, in *Ithell v. Potter* (1 T. Wms. 771, cited), it was determined that a party having altered a draught with his own hand was not a sufficient signature within the statute, and the same point received the opinion of the Court of Exchequer in *Stokes v. Moore* (1 Cox, 219.) In the case last alluded to, the defendant wrote certain instructions from which the lease was to be prepared in the following words:—"The lease renewed—Mr. Stokes to pay the king's tax; also to pay Moor 24l. a year half-yearly; Mr. Stokes to keep the house in good tenantable repair." It was holden that the name inserted in the body of the instrument, and applicable to particular purposes, could not amount to such an authentication of the instrument as the statute required. It was, however, admitted, that where the name is inserted in a manner as to have the effect of giving authenticity to the whole instrument, it does not much signify in what part of the instrument it is found; and it has been since determined, that if a person write an agreement, and begin thus "A. B. agrees to sell," it is a sufficient signing within the Statute of Frauds, notwithstanding a space may be left for the signature at the bottom of the paper: (*Saunderson v. Jackson*, 2 Bos. & Pull. 238; *Knight v. Crockford*, 1 Esp. N. P. C. 190; *Allen v. Bennett*, 3 Taunt. 169.) It seems also, that if a printed signature is done by the party's directions, it will be a sufficient signing by a lawfully authorised agent within the meaning of the statute (*Champion v. Plummer*, 1 Bos. & Pull.

What will constitute a sufficient signing within the Statute of Frauds.

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N. C. 386; *Schneider v. Norris*, 2 Mau. & Selw. 286); and where a party is in the habit of stamping instead of signing his name, it will be a sufficient signature; as will also a mark made by an illiterate person, or by one who from bodily weakness or other infirmity is incapable of signing his name. But stamping an instrument with a seal is not a signature within the meaning of the statute: (*Smith v. Evans*, 1 Wils. 313; *Grayson v. Atkinson*, 2 Ves. 424.) And in every case the signature of the name in some way or other is absolutely requisite. Hence, a letter from a mother to her son, commencing "My dear Nicholas," and concluding "Your affectionate mother," with the full name and address of the party set forth in the direction, was considered an insufficient signing within the statute.

When a signature by a witness will be a sufficient signing.

But a signature by a party as a witness may be a sufficient signature: yet in order to render it so, it must be shown that the witness was aware of the nature of the instrument at the time he signed it: for the act of signing will not of itself afford sufficient evidence of that fact; it being so frequent a practice for parties to sign their names as witnesses to agreements, or other writings, without having the slightest knowledge of their purport or contents: (*Walford v. Beasley*, 3 Atk. 503; *Harding v. Crethorn*, 1 Esp. N. P. C. 58.)

Agreement binding on the party signing, although not signed by the other party.

An agreement is equally binding on the party signing it, although not signed by the other contracting party. This important point was decided very shortly after the passing of the Statute of Frauds, and thus the law has continued down to the present day: (*Hatton v. Gray*, 2 Cha. Cas. 164; *Cotton v. Lee*, 2 Bro. C. C. 564, cited; *Buckhouse v. Crosby*, 2 Eq. Ca. Abr. 32, pl. 44; *Robson v. Collins*, 7 Ves. 130; *Seton v. Slade*, *ib.* 265; *Fowle v. Freeman*, 9 *ib.* 361; *Wain v. Warlters*, 5 East, 10; *Huddleston v. Briscoe*, 11 Ves. 583; *Weston v. Russell*, 3 Ves. & B. 187; *Saunders v. Wakefield*, 4 B. & A. 595; *Jenkins v. Reynolds*, 2 Bro. & Bing. N. C. 14; *Laythorp v. Bryant*, 2 Bing. N. C. 735.)

The agreement may be signed by the lawfully authorised agent, as well as by the party himself; such signature being within the express words of the 4th section of the Statute of Frauds; and an agent within this section of the statute need not be appointed by writing: (1 Hughes Pract. Sales, 75, 93, 2nd edit.) The power of the agent may, however, be revoked by the principal at any time before it is actually carried into execution: (*Emerson v. Heelis*, 8 Taunt. 38; *White v. Proctor*, 4 *ib.* 209; *Farmer v. Robinson*, 2 Camp. N. P. C. 339, n.; *Blagdon v. Bradbear*, 12 Ves. 466; *Mason v. Armitage*, 13 *ib.* 25.) It is also requisite that the agent should be a third person, as neither of the contracting parties can be the agent for the other: (*Wright v. Dannah*, 2 Camp. N. P. C. 203.) And, notwithstanding an agent's signature is binding, yet the clerk of such agent has not such a general authority as will enable him to sign so as to bind his principal; though the principal may, if he pleases, confer such a special authority upon him, or it may even be implied by his subsequently acquiescing in his so doing: (*Maclean v. Dunn*, 4 Bing. 722; *Coles v. Tregothic*, 9 Ves. 234.)

No. II.

AGREEMENT FOR THE LEASE OF A DWELLING-HOUSE, SITUATE
IN A BOROUGH TOWN, TO CONTAIN THE USUAL, AND SOME
SPECIAL COVENANTS.(a)

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| <ol style="list-style-type: none"> 1. Parties. 2. Agreement by lessor to grant, and by lessee to take, a lease of demised premises. 3. Agreement that lessee shall enter into covenants. 4. To pay rent. 5. To pay rates and taxes. 6. To keep and leave demised premises in tenantable repair. 7. Not to assign or underlet without licence. 8. Not to carry on offensive trades. 9. Lease to contain a proviso for determining the term at the election of the lessor or lessee, at the | <p>expiration of the first three, five, or seven years thereof.</p> <ol style="list-style-type: none"> 10. Proviso for re-entry for nonpayment of rent or breach of covenants. 11. For suspension or abatement of rent in case of the destruction or damage of demised premises by fire, &c. 12. Covenant that lessor shall repair. 13. Agreement that destruction of premises shall not avoid term, which shall continue in force, subject to a reduction of rent, the amount of which, if disputed, shall be referred to arbitration. 14. That lease shall contain a covenant from lessor for quiet enjoyment. |
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1. ARTICLES OF AGREEMENT made and entered into Parties.
this day of , A. D. 18 , BETWEEN (*lessor*) of, &c.,
for himself, his heirs, executors and administrators, of the one part,

(a) If any agreement, chargeable with the duty under the stat. 7 & 8 Vict. c. 21, shall be engrossed, written or printed upon vellum, parchment or paper, not duly stamped, and such agreement, &c. shall be brought to the Commissioners of Stamps and Taxes, or their authorized officers, to be stamped, together with the duty payable thereon, within fourteen days after such agreement, &c. shall have been made or entered into, the commissioners are required (sect. 5) to cause it to be stamped, without the payment of any penalty; but if it shall not be brought to be stamped, within that time, there shall be payable by way of penalty on the stamping thereof the sum of 10*l.* over and above the duty chargeable thereon.

No penalty will attach upon unstamped agreements if stamped within fourteen days after signature.
If not brought to be stamped within fourteen days, 10*l.* penalty will attach.

No. II. and (*lessee*) of, &c., for himself, his executors and administrators, of the other part.

Agreement for the Lease of a Dwelling-house, with usual and special Covenants.

Agreement from lessor to grant, and lessee to take, a lease of demised premises.

2. THE said (*lessor*) DOTH by these presents agree to grant, and the said (*lessee*) to take, a lease by indenture of ALL that messuage or dwelling-house, with the garden and appurtenances thereunto belonging, being No. 9, and situate in — street, in the parish of St. —, in the borough of P—, in the county of D—, for the term of — years, to commence on the 29th day of September next, at the yearly rent of 80*L.*, payable by four equal quarterly portions, clear of all rates, taxes, and assessments whatsoever (except the land tax (*b*), and income or property

Land tax must be proportioned to the rent reserved by the landlord.

(*b*) The principle on which the land tax acts are framed, is, to impose on the landlord, if there be only one, or on each landlord respectively, if sub-tenancies exist, a burthen proportioned to the amount of rent received by him: (*Ward v. Const.* 10 B. & C. 635; S. C., 5 Man. & Ry. 402.) The amount of rent received by the landlord is therefore the criterion by which the tax is to be regulated, whatever the consideration of the lease may be, so that if the lease is made in consideration of a premium, and at a small annual rent, the landlord must pay such proportion only of the land tax as the reserved rent bears to the total annual value of the premises demised (*ib.*, and see 2 Platt Leases, 174, 175, 176); and will not be increased by the premises being afterwards improved by the tenant, and underlet at an advanced rent: (*Barnfather v. Lee*, cited by Bull, J., 3 T. R. 379; *Yeo v. Leman*, 2 Str. 1191; S. C., by nom. *Yaw v. Leman*, 1 Wils. 21; *Whitfield v. Brandwood*, 2 Stark. N. P. C. 440; *Bramston v. Robins*, 12 J. B. Moore, 68.) In the absence of any stipulation between the landlord and tenant, the tenant will have to pay the tax; but he will be allowed to deduct the amount out of his rent: (stat. 38 Geo. 3, c. 5 (made perpetual by stat. 38 Geo. 3, c. 60), sects. 17, 18.)

Tenant will lose his lien, unless he retains sums paid by him in discharge of land tax out of his current rent.

But although a tenant, in the absence of a provision to the contrary, is entitled to deduct such sums as he may have paid for land tax out of his next payment of rent, he will lose this lien both at law (*Stubbs v. Parsons*, 3 Barn. & Ald. 516; *Denby v. Moore*, 1 Barn. & Ald. 123; *Andrew v. Hancock*, 1 Brod. & Bing. 37; S. C., 3 J. B. Moore, 278; *Spragg v. Hammond*, 2 Bro. & Bing. 59; S. C., 4 J. B. Moore, 431; *Saunderson v. Hanson*, 3 Car. & Pay. 124); and in equity, also, if he neglects to deduct it from the rent of his current year (*Att.-Gen. v. Baliol College*, 9 Mod. 410; *East v. Thornbury*, 3 P. Wms. 126, *arg.*; and see *Willey v. The Coopers' Company*, 3 P. Wms. 126, n. (B.); *Atwood v. Lamprey*, *ib.*; *Currie v. Gould*, 2 Mad. 163; *Nicholls v. Leeson*, 3 Atk. 573.) For otherwise an assignee of the reversion might be called upon to allow a deduction which the tenant had neglected to make upon the proper party who ought to discharge it: (*Stubbs v. Parsons*, *sup.*)

Agreement or covenant by tenant to exonerate his landlord from land tax will be binding.

And, notwithstanding that a tenant is allowed to deduct moneys paid by him in respect of land tax out of his current rent, this will not prevent him from entering into a binding covenant or agreement to exonerate his landlord from these payments, although the law is otherwise, with respect to the property tax; for by the land tax acts (38 Geo. 3, c. 5, made perpetual by stat. 38 Geo. 3, c. 60), it is expressly declared, that nothing therein contained shall be construed to alter, change, determine, or make void, any contracts, covenants, or agreements whatsoever, between landlord and tenant, or any persons, touching the payment of taxes and assessments: (sect. 35.)

tax (c)), on the 25th day of December, the 25th day of March, the 24th day of June, and the 29th day of September; the first quarterly payment to become due and be made on the 25th day of December next.

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Agreement for the Lease of a Dwelling-house, with usual and special Covenants.

It appears to be now settled, notwithstanding some earlier decisions seem to have involved the matter in some degree of doubt: (*Anon.*, Comb. 211; *Countess of Arran v. Crispe*, 1 Salk. 221; *Manning v. Lunn*, 2 Car. & Kir. 13), that a general covenant to pay all taxes, or to pay rent without deduction, will include the land tax, as also all future taxes of a nature and for purposes similar to those in existence at the time of the demise: (*Brewster v. Kitchen*, 1 Lord Raym. 317; S. C., sub. nom. *Brewster v. Kidgell*, *Kidgil* or *Kitchell*, 1 Salk. 168; 2 *ib.* 615; 3 *ib.* 340; Holt, 175, 669; Carth. 438; 12 Mod. 166; *Brudbury v. Wright*, 2 Doug. 264; *Amfield v. White*, 1 Ry. & Moo. 246; *Giles v. Hooper*, Carth. 135; *Champernon v. Champernon*, cited in *Brudbury v. Wright*, 2 Doug. 644; and 2 Platt Leases, 171.) And a covenant to pay all parliamentary, parochial, and other taxes, tithes, and assessments, will include a rent-charge on the demised premises, payable to a party who has redeemed the land tax formerly charged thereon; such rent-charge being a parliamentary assessment: (*Governors of Christ's Hospital v. Harriell*, 3 Scott N. R. 126; S. C., 2 Ma. & Gra. 707; *Ward v. Const.*, 10 B. & C. 635; S. C., 5 Man. & Ry. 402.)

To prevent all questions from arising upon the subject, where it is intended that lessor is to be exonerated from the land tax, after stating the amount of the rent and time of payment, add as follows:—

A general covenant "to pay all taxes," or, "to pay the rent, clear of all taxes," will include the land tax.

Practical suggestions.

"Clear of all rates, taxes, and assessments whatsoever (including also the land tax), which now are, or at any time during the continuance of the said term may be, assessed or imposed upon the said premises, or on the (lessor) on account thereof, or on account of the rent reserved in respect thereof, except the property tax, by authority of Parliament, or otherwise howsoever."

(c) With respect to the property tax, the stat. 5 & 6 Vict. c. 35, enacts, that unless the premises held by the lessee be under the annual value of 10*l.* when the assessment is made on the lessor (sect. 10), the tax on the rent payable by the lessee is in the first instance charged on and paid by the lessee (sect. 63), who (as in the case of land tax,) is entitled to deduct the amount out of the next payment of his rent (sect. 60, sched. A., No. IV., 9th rule); and all landlords, both mediate and immediate, must allow the deduction upon receipt of the residue of the rent (*ib.*). It is also provided (sect. 73), that no contract, covenant, or agreement between the landlord and tenant, or any other persons, touching the payment of taxes or assessments to be charged on their respective premises, shall be deemed or construed to extend to the duties charged thereon under the act, nor be binding contrary to the intent and meaning of the act: and that all deductions shall be made and allowed, notwithstanding such contracts, covenants, or agreements. And in case of any difference between landlord and tenant touching the sums to be deducted, the commissioners for general purposes in their several districts are empowered and required to settle the proportions of such payments and deductions, and in default of payment to levy the same.

Property tax.

No contract or covenant between landlord and tenant is to be permitted to exonerate the former from the payment of the property tax.

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the Lease of
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nants.

3. AND IT IS HEREBY FURTHER AGREED that such lease shall contain the following covenants on the part of the said (lessee), viz. :—

Agreement that
lessee shall
enter into
covenants.

To pay rent.

To pay rates
and taxes.

4. THE said (lessee) shall covenant to pay the yearly rent at the several days and times hereinbefore mentioned for payment thereof, and without deduction as aforesaid.

5. ALSO TO PAY all rates, taxes, and assessments (except the land tax, and income or property tax), which shall be made on the said premises, or on the tenant or occupier thereof, including the paving, lighting and sewers rates. (d)

To keep and
leave demised
premises in
tenantable
repair.

6. ALSO to keep the said messuage and premises during the said term in as good a state and condition as the same are now in, and so leave and deliver up the same at the end or sooner deter-

Tenant paying
his rent without
deducting the
property tax
will lose his
lien.

Money paid by a tenant on account of the property tax, may therefore be deducted by him out of the current rent. But if he pays his rent without making this deduction, he will lose his lien, and will not afterwards be permitted to recover these over-payments at law (*Denby v. Moore*, 1 Barn. & Ald. 123; *Andrew v. Hancock*, 1 Bro. & Bing. 37; S. C., 3 J. B. Moore, 278; *Cumming v. Bedborough*, 6 L. T. 396, 462); or to obtain relief in equity: (*East v. Thornbury*, 3 P. Wms. 126, 127, and the cases cited in note (b); *Currie v. Goold*, 2 Mad. 163; *Nicholls v. Leeson*, 3 Atk. 573.)

All deductions
in respect of
payments made
for property
tax shall be
allowed, not-
withstanding
an express
covenant or
agreement
between land-
lord and tenant
to the contrary.

By the express words of the act of Victoria, deductions in respect of payments made for property tax shall be allowed, notwithstanding any contract, covenant or agreement between the landlord and tenant to the contrary; and if the tenant has paid the property tax for his landlord, he may still produce the collector's receipt to the landlord in discharge of so much of the rent: (*Gaskell v. King*, 11 East, 165; and see *Wigg v. Shuttleworth*, 13 East, 87; *Readshaw v. Balders*, 4 Taunt. 57; *Fuller v. Abbott*, 4 Taunt. 105; *Tinkler v. Prentice*, 4 Taunt. 459; *Morgan v. Edwards*, 6 Taunt. 395; S. C., 2 Mars. 96.) But, although a covenant from a tenant for payment of the property tax, and to indemnify his landlord therefrom, will be void in itself, still it will not defeat a distinct covenant for payment of rent, "clear of all parliamentary, parochial and other taxes, rates, assessments and deductions whatsoever;" inasmuch as the words must be understood to refer to taxes which the tenant may lawfully covenant to pay in exoneration of his landlord: (*Gaskell v. King*, *sup.*; see also 2 Platt on Leases, 180.)

Sewers rates.

(d) A sewers rate is not comprised in a covenant by a tenant to pay all rates, parochial and parliamentary (*Palmer v. Earith*, 14 Mees. & Wels. 428; *Waller v. Andrews*, 3 ib. 312; S. C., 1 Horn. & Hurl. 87); though it would, it seems, be included under the terms "all outgoing whatsoever;" and it has also been held that the word *scot*, which was commonly applied to a sewers rate on marsh lands, showed that the sewers rate was included: (*Waller v. Andrews*, *sup.*) To prevent any doubts upon the matter it is better to mention the sewers rates in express terms, as in the above clause.

mination of the said term, fair wear and tear, and accidents by fire, flood, storm or tempest excepted.(e)

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Agreement for the Lease of a Dwelling-house, with usual and special Covenants.

Repairs.

(e) As a general rule throughout the kingdom, if an agreement be entered into for a lease with the usual covenants, the burthen of repairs will fall upon the lessee, who, if he files his bill upon the contract, will not be entitled to a specific performance unless he consents to enter into a covenant to this effect; though the case might be different should the lessor be plaintiff to compel the lessee to take the lease: (*Burwell v. Harrison*, Pre. Cha. 25; S. C., 2 Vern. 231.) It seems, however, that in the city of London (Bro. Abr. Dette, pl. 18; *Hart v. Windsor*, 12 Mees. & Wels. 183), in Norfolk, and in the Isle of Ely, a different usage prevails: (*Burwell v. Harrison*, *sup.*, and see 2 Platt Leases, 183.)

Independently of any covenant or agreement, it seems that a tenant is bound to keep the premises wind and water tight (*Anworth v. Johnson*, 5 Car. & Pay. 229; *Leach v. Thomas*, 7 ib. 327; *Fisher v. Maguire*, Arms. Mac. & Og. 51, 55); to replace doors or windows that are broken during his occupation: absence of a (*Cheekam v. Hampson*, 4 T. R. 318; *Gregory v. Mighell*, 18 Ves. 331.) But he is not liable for the mere wear and tear of the premises, and therefore is not bound to replace doors and sashes worn out by time (*Horsefall v. Mather*, Holt. N. P. C. 7); or to put on a new roof (*Ferguson v. —*, 2 Esp. N. P. C. 590); or rebuild the premises if burnt down, or become ruinous by any other accident (*Anworth v. Johnson*, *sup.*); or to make substantial and lasting, or what are usually termed general repairs: (*Ferguson v. —*, *sup.*; *Leach v. Thomas*, *sup.*; *Doe ex dem. Thompson v. Arney*, 12 Ad. & Ell. 476; S. C., 4 Per. & Dav. 177; *Fisher v. Maguire*, *sup.*) And it has even been held that a tenant of a house under a written agreement, by which he undertakes to keep it in tenantable repair during the term, is justified in quitting it in the course of the term, without notice, if the premises become unwholesome for want of sufficient drainage, and cannot be kept dry without extravagant and unreasonable labour and expence on his part: (*Collins v. Barrow*, 1 Moo. & Rob. 112; and see 2 Platt Leases, 183.)

As to tenant's liability to repairs in the absence of a covenant or agreement to that effect.

By the common law, a lessee whether for life or years, who held under a contract with the owner of the fee, and not by act of law, as tenant in dower not being punishable for waste (2 Blac. Com. 282, 283), was not responsible for the consequences of fire; but the Statutes of Marlbridge (52 Hen. 3, c. 23,) and Gloucester (6 Edw. 1, c. 5), by extending the writ of waste to any farmer or other that held in any manner for life or years, rendered him liable to damages for the injury. From this liability he has been, however, relieved by the statutes of 6 Anne, c. 31 (made perpetual by 10 Anne, c. 14), and of 14 Geo. 3, c. 78, by the latter of which it is enacted, that no action, suit, or process whatsoever shall be had, maintained, or prosecuted against any person in whose house or chamber such fire shall accidentally begin, or any recompence be made by such person for any damage suffered or occasioned thereby. In the absence, therefore, of any engagement on the part of the lessee to repair, the lessor has no power to compel him to rebuild or restore the premises in the case of their injury or destruction by fire: (*Horsefall v. Mather*, Holt. N. P. C. 7.) Still this act will only exonerate a lessee where he has no express engagement to repair; for if the lease contains a covenant to that effect, and which the statute expressly authorises, it will be binding on the lessee from whatever cause the dilapidation ensues, whether from flood, fire, earthquake, lightning, storm, tempests, or the Queen's enemies (40 Edw. 3, c. 5, 11; Bro. Ab. 192, Covenant, pl. 4; *Walton v. Waterhouse*, 2 Saund. 240; *Anon.*, 1 Vent. 38; *Walton v. Johnson*, 2 Keb. 535; *Paradine v. Jane*, Al. 36; *Common v. Allen*, Sty. 162; *Poole v. Archer*, 2 Show.; S. C., Skin. 210; *Chesterfield v. Bolton*, Com. 627; *Bullock v. Dummit*, 6 T. R. 650; S. C., 2 Chitt. 608; *Pym v. Blackburn*, 3 Ves. 381); or even through the act of a mere stranger (*Green v. Eales*, 1 Ga. & Dav. 463); for when a party by his own contract creates a duty or charge

Waste.

Lessee under covenant to repair is bound to rebuild in case the property is destroyed by fire.

No. II.

Agreement for
the Lease of
a Dwelling-
house, with
usual and
special Cove-
nants.

Not to assign
or underlet
without licence.

Not to carry on
offensive trades.

7. ALSO not to assign or underlet the said messuage and premises, or any part of the same, without the previous consent in writing of the said (*lessor*), his heirs or assigns.

8. ALSO not to use or exercise, or permit to be carried on, the trade or business of a tavern keeper, licensed victualler, retailer of spirituous liquors, beer-shop keeper, eating-house keeper, oyster seller, tea or coffee-house keeper, tripe boiler or seller, or vendor of coals, tallow chandler, tallow melter, soap boiler, sugar baker, working hatter, common brewer, distiller, slaughterman, butcher, baker, dyer, fellmonger, fishmonger, pipemaker, trunkmaker, coachmaker, working brazier, tinman, plumber, painter, oilman, smith, farrier, tanner, tawer, currier, or any other noisome or offensive trade or business whatsoever, or convert the said premises into a school, or a private lunatic asylum; (f) or to bring, or suffer to be brought, placed or lodged upon the said premises, or upon any part of the

upon himself he is bound to make it good, notwithstanding any accident by inevitable necessity; because he might have provided against it by his contract: (*Paradine v. Jane, sup.*) And although where a party has entered into a covenant to repair under a penalty, and the premises are destroyed by lightning, earthquake, storm, or tempest, he will be excused from the penalty, because the misfortune proceeded from the hand of God, which cannot be resisted, yet he must repair in convenient time, because he has expressly contracted so to do: (*Anon., Dy. 33 a, pl. 10.*)

If the covenant
be merely to
leave in repair,
no action will
lie for not
keeping the
premises in
repair.

If the covenant be merely to leave the premises in repair, however ruinous they may be during the tenancy, it seems the lessor can bring no action until it has expired; for until the premises are left out of repair at the end of the term, no breach of the covenant has been incurred: (*Walter v. Montague*, 2 Roll. Abr. 332; S. C., *sub nom. Waterer v. Montague*, Godb. 335; see also *Shep. Touch. 173.*) But if the covenant is to keep the premises in repair, then the lessee is bound to keep them in repair during the whole term: (*Luxmure v. Robson*, 1 Barn. & Ald. 584.) And if a tenant under a covenant to repair holds over after the determination of his term, under a parol agreement with his lessor, as his tenancy will be subject to all the covenants in the lease, he will be bound to rebuild in case the premises are burnt down during his new tenancy: (*Digby v. Atkinson*, 4 Camp. N. P. C. 275; *Doe dem. Bell v. Rigge*, 5 T. R. 471; *Beaven v. Delahay*, 1 H. Black. 8; *Torriano v. Young*, 6 Car. & Pay, 8; *Beale v. Saunders*, 3 Bing. N. C. 850; S. C., 5 Scott, 58; 3 Hodg. 147.)

Covenant not
to carry on
offensive trades.

(f) A clause to restrain a lessee from carrying on offensive trades should always be inserted, where such is intended to be prohibited by the lease; for this is not a *usual covenant*, and, in the absence of an express stipulation to the contrary, a lessor, who is the owner of the fee (or even if he be a lessee, provided the intended lessee has notice of that fact), has no right to call upon a lessee to enter into any covenants that are not denominated usual covenants: (*Van v. Clark*, 8 Myl. & Kee. 269; *Propert v. Parker*, *ib.* 280; *Flight v. Barton*, *ib.*, 282; *Cosser v. Collinge*, *ib.* 283.) In the case of an underlease, however, it seems that if a party enters into possession of the premises without making any inquiry respecting the covenants in the original lease, and such original lease

same, any pitch, tar, turpentine, vitriol, tallow, oil, flax, hemp or gunpowder, or any other goods or materials of such a nature or quality as may in any way tend to invalidate any insurance against damage by fire, now or hereafter to be made on the said premises.

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Agreement for the Lease of a Dwelling-house, with usual and special Covenants.

9. ALSO that the said lease shall contain a proviso for determining the said term at the end of the first three, five, or seven years thereof, at the option of the said (lessor) or (lessee), upon giving to the other of them six calendar months' previous notice thereof in writing.

Lease to contain a proviso for determining the term at the election of the lessor or lessee, at the expiration of the first three, five, or seven years.

10. ALSO that the said lease shall contain a proviso empowering the said (lessor) to re-enter on the said premises, and avoid the

Proviso for re-entry for non-payment of rent or breach of covenants.

contains a covenant not to carry on certain trades upon the premises, he can be compelled to enter into a covenant to that effect, notwithstanding the agreement is altogether silent upon that point: (*Cosser v. Collinge, sup.*) But where a party dealing with a lessee for an underlease informed him of the nature of the business he intended to carry on upon the premises, and the lessee omitted to apprise him that the exercise of such trade was prohibited by the original lease, the court considered the lessee's silence on the subject equivalent to a representation that there was no such prohibiting covenant, and consequently, that the underlessee could not be compelled to take the underlease with the restriction: (*Flight v. Barton, sup.*)

It is the usual practice, after enumerating the peculiar businesses or trades that are intended to be prohibited, to conclude with the words "or any other noisome or offensive trade or business whatsoever," as in the above clause. It is important also to employ the word "business" as well as "trade," as the court will not extend the word "trade" beyond its true import, and as applicable only to a dealing by buying and selling; for every business is not a trade, although every trade is a business: (*Doe ex dem. Wetherall v. Bird, 2 Ad. & El. 161; S. C., 4 Nev. & Man. 285; 6 Car. & Pay. 201.*)

Practical observations.

With respect to what will be considered as an offensive or a noisome trade where none are enumerated, this must depend in a great measure upon the situation of the premises; and, it seems, it would not comprehend any of such trades as were carried on upon the premises at the time of granting the lease: (*Gutteridge Munyard, 1 Moo. & Rob. 334; S. C., 7 Car. & Pay. 129.*) It has also been held that converting a dwelling-house into a public-house was no breach of a covenant not to carry on any trade or business that might grow to or lead to be offensive, or any annoyance or disturbance to any of the tenants of the lessor, or of the neighbourhood, various other trades having been prohibited, but that of a licensed victualler not specified: (*Jones v. Thorne, 1 Barn. & Crea. 715; S. C., 3 Dow. & Ry. 152.*) The trade of a coachmaker does not fall within a provision against an offensive trade: (*Bennett v. Saddler, 14 Ves. 526.*) Neither, it has been said, is a brewhouse necessarily a nuisance: (*Gorton v. Smart, 1 Sim. & Sta. 66.*) Nor does the carrying on the business of a retail brewer amount to a breach of covenant not to carry on the trade of a common brewer, or retailer of beer: (*Simons v. Farren, 1 Bing. N. C. 126, 272; S. C., 1 Moo. & Sco. 672;*

What will be considered as offensive or noisome trades.

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said term, in case of nonpayment of the reserved rent by the space of twenty-one days after the same shall become payable; or in case of nonperformance of any of the covenants of the said lease, on the part of the said (*lessee*) to be observed and performed.(g)

For suspension or abatement of rent in case of the destruction or damage of demised premises by fire, &c.

11. ALSO a proviso for the abatement or suspension of the rent during such time as the said premises may remain untenable,

1 Scott, 105.) And in a case where several trades or businesses, which were enumerated, were not to be carried on, the clause concluding, "or any offensive trade," a question arose whether the using the house as a lunatic asylum was a breach; and the court held, that though every trade was a business, every business was not a trade; and that to answer that description it must be conducted by a buying and selling, which the business of keeping a lunatic asylum was not; and that this argument was strengthened by observing that the trades and businesses enumerated were conducted by buying and selling; and that if the general word *trade* must be held to introduce any others in addition, they, at least, must be *ejusdem generis* with the former: (*Doe ex dem. Wetherall v. Bird, sup.*)

Practical remarks.

If, therefore, a lessor wishes to guard against demised premises being used as a public-house, or in carrying on the business of a retail brewer, a coachmaker, or as a school, or a lunatic asylum; or even, it seems, to prevent any part of the premises from being used as a brewhouse, he should take especial care to insert an express stipulation to that effect.

Equity will not relieve against a forfeiture for breach of covenant not to carry on a prohibited trade or business.

Equity will not relieve against a forfeiture occasioned by a breach of a covenant not to carry on a prohibited trade or business: (*Macher v. The Foundling Hospital*, 1 Ves. & Bea. 188.) Nor will the circumstance of the lessor allowing one of the prohibited trades to be carried on without objection, enable the lessee to avail himself of this tacit permission to carry on any of the others; neither will equity enter into a comparison, and permit him to carry on some trades as less offensive than others (*ib.*) The lessor, notwithstanding the prohibition is secured by a forfeiture of the lease and by a penalty, may still obtain an injunction in the nature of a specific performance, to restrain a breach of the covenant: (*Barrett v. Blagrove*, 5 Ves. 555.)

What acts of the lessor will amount to a waiver of the forfeiture.

A forfeiture for a breach of covenant may however be waived by the act of the lessor; as if, with full knowledge of the breach, he accepts of rent, or does any other act to affirm the tenancy. But mere knowledge or tacit acquiescence, without such acts, will not amount to a waiver. And this doctrine, with respect to the waiver of forfeiture, seems only to hold where the breach is complete at once, as by converting a house into a shop, or the like; for if the covenant prohibit the *using* of premises in a certain way, the landlord, after he has received rent accruing since a breach, and with knowledge of a breach, of the covenant, may nevertheless maintain an ejectment for a continual using; for a new breach occurs every day they are so used: (*Doe dem. Ambler v. Woodbridge*, 9 B. & C. 376; and see 2 Platt Leases, 236.)

Lessee under an agreement may be ejected on proof of conduct that would amount to a breach of covenant, if the lease was executed.

(g) Under this proviso a lessee may be ejected on proof of conduct which would amount to a breach of covenant, if the lease was executed: (*Doe dem. Thompson v. Amey*, 12 Ad. & El. 476; S. C., 4 Per. & Dav. 177; see also *Tempest v. Bowling*, 13 East, 18.) The above is, therefore, an important clause in all agreements for leases, although some careful practitioners consider it advisable in all cases to insert a stipulation that, until the lease is executed, the tenant shall hold at a day fixed as tenant from year to year, under the rent, covenants and conditions comprised in the contract, which will be admissible as evidence of a parol letting from year to year, where the agreement is not under seal.

or useless, in consequence of destruction or damage by fire, flood, storm or tempest.(h)

12. ALSO a covenant on the part of the said (*lessor*), his heirs or assigns, to rebuild or repair such premises so destroyed or damaged by fire, flood, storm or tempest as aforesaid, as soon as conveniently may be after such accidents shall occur. (i)

13. AND IT IS HEREBY FURTHER AGREED, that notwithstanding the said messuage and premises shall be so destroyed or damaged by fire, flood, storm or tempest as aforesaid, either before the commencement or during the continuance of the said term, this agreement shall not be avoided thereby, but shall nevertheless continue in force in the same manner as if those accidents had never taken place, but subject to such suspension or abatement of the rent during

No. II.

Agreement for the Lease of a Dwelling-house, with usual and special Covenants.

Covenant that lessor shall repair.

Agreement that destruction of premises shall not avoid term, which shall continue in force, subject to a reduction of rent, the amount of which, if disputed, shall be referred to arbitration.

(h) This is a most important clause for lessees; for, notwithstanding a stipulation that a tenant will not be bound to repair in case the premises shall be destroyed by fire, flood, storm or tempest, he will still remain liable under his covenant for payment of the rent during the term even where the premises are so damaged as to be utterly useless and untenable, and the lessor, who has express notice, neglects or refuses to repair them: (*Monck v. Cooper*, 2 Lord Raym. 1477; *S. C.*, 2 Stra. 763; *Pindar v. Ainsley*, 1 T. R. 312; *Belfour v. Weston*, *ib.* 310; *Weigall v. Waters*, 6 T. R. 488; *Leeds v. Cheetham*, 1 Sim. 150; *Hare v. Groves*, 3 Anstr. 687.) Formerly, indeed, the Court of Chancery would have relieved in cases of this description, and although the landlord would not have been compelled to rebuild, he would nevertheless have been restrained from proceeding at law for the recovery of his rent until he did so: (*Camden v. Moreton*, cited Selw. N. P. 457, 9th edit.; Serjt. Hill's MSS. in Lincoln's Inn Library, vol. x. p. 403; 2 Eden, 219; *Brown v. Quilter*, Ambl. 619; *Steele v. Wright*, cited 1 T. R. 708.) But it has been since decided that a tenant has no such equity, and in *Leeds v. Cheetham* (1 Sim. 146), the court refused to compel a landlord to expend money received from an insurance office on account of the demised property which had been burnt down in rebuilding the premises, or to restrain the landlord from suing for the rent until the premises were rebuilt: (see also *Carter v. Cummins*, cited 1 Cha. Cas. 84; *Anon.* 1 Dy. 33, w. pl. 101; *Harrison v. North*, 1 Cha. Cas. 33; *Hare v. Groves*, *sup.*; *Holtzapffel v. Baker*, 18 Ves. 117; 1 Hughes on Sales, 520, 2nd edit.) This notion also, which was formerly entertained, of an offer by the tenant to surrender the premises to the lessor forming the ground for the interposition of equity in favour of the former, is also exploded: (*Holtzapffel v. sup.*, and see 2 Platt Leases, 125.)

(i) This is also an important clause for lessees, as the exception of a tenant's liability to repairs, in case the premises are destroyed by certain accidents, does not, as we have already seen (*ante*, note (h)), compel the landlord to repair them. In the absence of such stipulation, therefore, a tenant might be deprived of all benefit of the property, unless he chooses to be at the expense of making the necessary reparations himself: for if a tenant incurs an expenditure in repairs he is not compelled to make, he cannot deduct the amount from his rent, or call upon his landlord for repayment: nor will equity interpose in his favour: (*Weigall v. Waters*, 3 Anstr. 575; *S. C.*, 6 T. R. 488)

Practical observations.

In the absence of a stipulation to the contrary, lessee, under his covenant for payment of rent, continues liable, if the premises are destroyed by fire.

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nants.*

such time as the said premises shall remain wholly or partially useless or untenable; and in case any dispute shall arise respecting the amount of such suspension or abatement, the same shall be determined by the award of two arbitrators and an umpire, in the usual manner. (k)

That lease
shall contain a
covenant from
lessor for quiet
enjoyment.

14. AND IT IS HEREBY MOREOVER AGREED that the said (*lessor*) shall covenant, that subject to the payment of the rents and performance of the covenants by the said (*lessee*), the said (*lessee*), his executors, administrators and assigns shall peaceably and quietly hold and enjoy the said premises for the term thereby demised. [INSERT clause that instrument shall operate as an agreement, and not as a lease, as in last precedent, clause 5, p. 432.]

IN WITNESS, &c.

That instrument
shall operate as
an agreement,
and not as a
lease.

If property
becomes
depreciated in
value, lessee
must bear the
loss.

(k) This clause, though a useful one in preventing disputes, is not absolutely necessary, because, upon the established principle of equity, "that that which has been agreed to be done, is to be considered as already performed," a purchaser who signs a contract for a purchase, or a lessee who enters into an agreement for a lease, must stand by the profit or loss of his bargain. If the property increases in value, the vendor or lessor is not to be entitled to a penny more purchase money or rent on that account; and if its value diminishes, the lessee in like manner must abide the loss: (see *Paine v. Mellor*, 6 Ves. 349; *Ex parte Minor*, 11 Ves. 562; *Hunter v. Wilson*, 2 Coll. of Decis. 56; *Atkinson v. Dickson*, *ib.*; *Zagwry v. Furnell*, 2 Camp. N. P. C. 240. See also *Cass v. Rudell*, 2 Vern. 280; *Poole v. Shergold*, 3 Bro. C. C. 118; *Kevell v. Hussey*, 2 Ball. & B. 280; *Harford v. Purrier*, 1 Mad. 352; *Binks v. Lord Rokeby*, 2 Swanst. 222; *Minchin v. Nance*, 4 Beav. 341; *Lord — v. Stephens*, 1 You. & Coll. 222; 1 Hughes Pract. Sales, 479, 2nd edit.)

No. III.

 AGREEMENT FOR LETTING A HOUSE FOR THREE YEARS, WITH
USUAL STIPULATIONS.

- | | |
|--|---|
| 1. Parties.
2. Agreement to let for three years.
3. Tenant to pay rent.
4. Also rates and taxes.
5. Also to keep glass and interior of premises in repair, and so leave the same at the expiration of term.
6. Not to assign or underlet without licence. | 7. Lease to be prepared and executed by landlord at the costs of tenant.
8. Term to determine in case tenant shall assign or underlet without licence, or become bankrupt or insolvent, or suffer execution to be taken of his goods.
9. Proviso that instrument shall operate as an agreement, and not as a lease. |
|--|---|
-

1. MEMORANDUM OF AN AGREEMENT made and Parties.
entered into this day of , BETWEEN (*landlord*), of, &c., of
the one part, and (*tenant*), of, &c., of the other part.

2. THE said (*landlord*) hereby agrees to let, and the said *tenant* Agreement to let for three years.
hereby agrees to take, from the 25th day of March instant, for the
term of three years, ALL, &c. [DESCRIBE *parcels*], at the yearly
rent of 85*l.*, payable by four equal quarterly payments, on the
24th day of June, the 29th day of September, the 25th day of
December, and the 25th day of March in every year, the first
payment to be made on the 24th day of June next.

3. THE said tenant agrees to pay the said rent at the several Tenant to pay rent.
days and times as aforesaid.

No. III.

*Agreement
for Letting a
House for
Three Years,
with usual
Stipulations.*

Also rates and
taxes.

Also to keep
glass and
interior of
premises in
repair, and so
leave the same
at the expiration
of term.

Not to assign or
underlet with-
out licence.

Landlord to
keep exterior
in repair.

Lease to be
prepared and
executed by
landlord at the
costs of tenant.

4. ALSO to pay the land tax, and all other rates, taxes, tithes, rent-charge in lieu of tithes, and all outgoings of every kind and description, whether parochial or parliamentary, which during the said term shall be charged, assessed, or imposed upon the said premises, or the landlord or tenant in respect thereof, except the landlord's property tax.

5. ALSO to keep the glass of the windows and all internal parts of the said premises in repair, and so leave the same at the end of the said term (accidents by fire, flood or tempest only excepted.)

6. AND ALSO shall not assign, underlet or part with the possession of the said premises without the consent in writing of the said (*landlord*), nor use the same other than and except as a private dwelling-house.

7. AND the said (*landlord*) agrees to keep all the external parts of the said premises in good repair.

8. AND it is hereby also mutually agreed between the said (*landlord*) and (*tenant*), that a lease pursuant to the above terms, and containing a covenant for payment of the rent on the several days hereinbefore mentioned, (a) and all other usual clauses, covenants, conditions and agreements, to be at any time prepared and executed by the said (*landlord*), at the request and costs of the said (*tenant*), and which shall also contain a proviso that if the said rent shall be unpaid twenty days after any or either of the said days of payment, or if the said (*tenant*) shall make default in performing any of the covenants, conditions and agreements to be contained in the said lease on his part to be observed and performed, it shall be lawful for the said (*landlord*) to re-enter and determine the tenancy of the said (*tenant*.)

(a) The words "usual covenants" in an agreement for a farming lease were held not to apply to the periods for payment of the rent, but only to agricultural covenants: (*Haynes v. Brown*, 21 L. T. Rep. 24.)

9. ALSO, that the said term hereby agreed to be granted shall, at the option of the said (*landlord*), determine, and the said *landlord* have an immediate right of entry in case the said (*tenant*) shall assign, underlet or part with the possession of the said premises without such licence as aforesaid, or in case the said (*tenant*) shall become bankrupt, or take, or attempt to take, the benefit of any act for the relief of insolvent debtors, or shall permit any writ of execution to be levied upon his goods.

9. PROVIDED ALWAYS, that this instrument shall not operate as a lease, or present demise of the said premises, or any part thereof, but as an agreement for a lease.

AS WITNESS our hands this day of

No. III.

*Agreement
for Letting a
House for
Three Years,
with usual
Stipulations.*

Term to
determine in
case tenant
shall assign or
underlet with-
out licence, or
become bank-
rupt or insol-
vent, or suffer
execution to be
taken of his
goods.

Proviso that
instrument shall
operate as an
agreement and
not as a lease.

No. IV.

TERMS FOR LETTING A FARM.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Term from year to year, determinable by six months' notice by either party. 2. Rent to be reserved quarterly. 3. Tenant to pay all rates and taxes, except property tax. 4. Landlord to repair roofs, &c., and tenant to keep interior of premises in repair. 5. Tenant to repair gates, posts, stiles, rails and palings; and also to trim hedges and scour ditches. 6. Tenant to keep tillage land in due course of husbandry; to con- | <ol style="list-style-type: none"> sume all the manure on the premises; not to mow meadow land more than once a year. 7. Not to assign or underlet without licence. 8. Term to cease in case tenant shall assign without licence, or become bankrupt or insolvent, or suffer execution to be taken of his goods. 9. Instrument to operate as an agreement and not as a lease. 10. Mutual agreement between landlord and tenant. |
|--|--|

Heading.

TERMS between landlord and tenant for letting a messuage farm in the parish of S—, in the county of Devon, the particulars of which are specified in the schedule hereunto annexed.

Term from year to year, determinable on six months' notice by either party.

1. TERM to be (*insert duration of term*), commencing on the 29th day of September next, and so to continue until the landlord, or his agent, or the tenant, shall determine the same by giving six calendar months' previous notice in writing to that effect to the other, such notice to expire on the 29th day of September.

Rent to be reserved quarterly.

2. RENT to be 180*l.* a year, to be paid by four equal quarterly payments, on the 25th day of December, the 25th day of March, the 24th day of June, and the 29th day of September; the first quarterly payment to be made on the 25th day of December next.

3. THE tenant also to pay the land-tax, and all other rates, taxes, tithes, rent-charge in lieu of tithes, and all outgoing of every kind and description, whether parochial or parliamentary, which during the said term shall be charged, assessed, or imposed upon the said premises, or on the landlord or tenant in respect thereof, except the landlord's property tax.

No. IV.

*Terms for
Letting a Farm
in the County
of Devon, from
Year to Year.*

Tenant to pay
all rates and
taxes, except
property-tax.

4. THE landlord to keep in repair the roofs, walls, beams and stanchions of the said dwelling-house, barn and outhouses belonging to the said premises; and the tenant to keep in repair the glass of the windows of the dwelling-house, and all the internal repairs and paintings, and so leave the same at the expiration of the said term (reasonable wear and tear and accidents by fire, flood, or tempest only excepted.)

Landlord to
repair roofs, &c.,
and tenant to
keep the
interior of the
premises in
repair.

5. THE tenant also to maintain, keep and leave in repair all gates, post, stiles, rails, and palings; also to amend and repair, and so leave at the expiration of the said term, all the hedges, embankments, walls and other fences; and cleanse and scour the ditches, drains and watercourses in or upon the said premises, when the same shall become necessary.

Tenant to repair
gates, posts,
stiles, rails and
palings, and
also to trim
hedges and
scour ditches.

6. THE tenant to keep the tillage land of the said premises in due course of husbandry, and not to sell or dispose of any manure which shall arise upon the said farm, but shall consume the whole of such manure upon the said premises; and shall not mow any part of the meadow land of the said farm more than once in one year; and in all respects shall manage the said premises in a proper and husbandry-like manner.

Tenant to keep
tillage land in
due course of
husbandry; to
consume all
manure on the
premises.

Not to mow
meadow land
more than once
a year.

7. THE tenant not to assign or underlet the said premises, or any part thereof, or permit the same to be occupied by any other person without the previous consent in writing of the landlord.

Not to assign
or underlet
without licence

8. THE said term to determine, and the landlord to have immediate right of re-entry, in case the tenant shall assign or underlet the said premises, or any part thereof, or permit the same to be occupied by any other person, without such licence as aforesaid; or in case the tenant shall become bankrupt, or take or attempt to

Term to cease
in case tenant
shall assign
without licence,
or become
bankrupt or
insolvent, or
suffer execution
to be taken of
his goods.

No. IV.

*Terms for
Letting a Farm
in the County
of Devon, from
Year to Year.*

Instrument to
operate as an
agreement and
not as a lease.

Mutual agree-
ment between
landlord and
tenant.

take the benefit of any act or acts for the relief of insolvent debtors, or shall permit any writ of execution to be levied on his goods.

9. THAT this instrument shall operate as an agreement for a lease, and not as a lease.

10. (*Landlord*) of, &c., and (*tenant*) of, &c., each of them for himself, his heirs, executors, administrators and assigns, mutually agree to and with each other, that the said (*landlord*) and (*tenant*) respectively, and their respective heirs, executors, administrators and assigns, will from time to time, and at all times during the continuance of the term hereby agreed to be granted, make the payments and duly observe and perform all and every the articles, stipulations and agreements above mentioned on his and their respective parts to be observed, paid and performed.

IN WITNESS whereof they have hereunto respectively set their hands, this day of 185 .

THE SCHEDULE ABOVE REFERRED TO.

No. on Map.	Description of Parcels.	Culture.	Quantity in Statute Measure.			Observations.
			A.	R.	P.	

No. V.

AGREEMENT TO TAKE A FURNISHED HOUSE FOR A YEAR;
THE LANDLORD TO PAY ALL RATES AND TAXES; WITH
A PROVISIO FOR DETERMINING THE TERM IN CASE OF
NON-PAYMENT OF RENT, OR LESSEE PERMITTING THE
FURNITURE TO BE TAKEN IN EXECUTION.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Letting of the house for one year, at the rent of 84<i>l.</i>, payable quarterly. 3. Tenant to pay an additional rent for the use of the fixtures and furniture. 4. Lessor to pay rates and taxes. | <ol style="list-style-type: none"> 5. Lessee to keep interior of premises in repair, and to preserve household furniture, and to supply breakages and losses. 6. Proviso for re-entry for nonpayment of rent, and for avoiding the agreement, in case the furniture should be taken in execution. |
|--|---|

1. ARTICLES OF AGREEMENT, made and entered into Parties.
this day of A.D. 18 , BETWEEN (*lessor*) of, &c., for
himself, his heirs, executors and administrators of the one part,
and (*lessee*) of, &c., for himself, his executors, administrators and
assigns, of the other part.

2. The said (*lessor*) DOth hereby agree to let, and the said (*lessee*) DOth hereby agree to take, ALL, &c. [HERE DESCRIBE the house], with the appurtenances thereunto belonging, from the day of the date hereof, for the term of one whole year, at the yearly rent of 84*l.* payable by equal quarterly payments (that is to say), Lady-day, Midsummer, Michaelmas, and Christmas; the first quarterly payment to be made at Lady-day next.

Letting of the house for one year, at the rent of 84*l.*, payable quarterly.

No. V.

Agreement to take a House, with the Furniture, for One Year; Landlord to pay Rates and Taxes; with a Proviso for determining the Term, &c.

Tenant to pay an additional rent for the use of the fixtures and furniture.

3. AND IT IS HEREBY FURTHER AGREED, that the said (*lessee*), his executors, administrators, and assigns, shall have the use and enjoyment of all and singular the fixtures, household furniture and utensils now contained in the said dwelling-house, during such time as the said (*lessee*), his executors, administrators or assigns, shall continue to occupy the same; and that the said (*lessee*), his executors, administrators or assigns, shall pay unto the said (*lessor*), his executors, administrators or assigns, for the use of the said fixtures, household furniture and utensils, the sum of 96*l.*, in addition to the said yearly rent of 84*l.*, by four equal quarterly payments, on the days and times hereinbefore appointed for payment of the said rent.

Lessor to pay rates and taxes.

4. THAT the said (*lessor*) shall and will pay and discharge all rates, taxes, assessments and impositions whatsoever, payable in respect of the said premises, or chargeable upon the owner or occupier in respect thereof.

Lessee to keep interior of premises in repair, and to preserve household furniture, and to supply breakages and losses.

5. THAT the said (*lessee*), his executors, administrators or assigns, will keep the glass, windows, bells, locks, fastenings and fixtures in good repair, and so leave the same at the expiration of the said term; and also shall and will keep, and at the expiration of the said term leave, the said household furniture and utensils (reasonable wear and tear, and accidents by fire, flood, storm and tempest only excepted), in as good a state and condition as the same are now in; and will also make good and supply the place of any of the said articles of furniture that may be broken, lost or destroyed during the said term: and will not use or employ the said fixtures, household furniture or utensils at any other place than on the said premises. (*a*)

Proviso for re-entry for nonpayment of rent, and for avoiding the agreement, in case the furniture should be taken in execution.

6. PROVIDED ALWAYS, that if the rent hereby reserved shall be in arrear for the space of twenty days next after any of the said quarterly days of payment whereon the same is payable as

(*a*) If the lessee is not to assign or underlet without licence, insert clause 7 in No. II., *ante*, p. 440.

uforesaid (being demanded), or in case the said household furniture and utensils, or any part of the same shall be taken in execution of any process against the goods of the said (*lessee*), (*c*) his executors, administrators, or assigns, *then* it shall be lawful for the said (*lessor*), his heirs, executors, administrators or assigns, to re-enter upon the said premises, and to possess and enjoy the same according to the respective natures and qualities thereof, in the same manner as if this agreement had never been made, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

No. V.

Agreement to
take a House,
with the Furni-
ture, for One
Year; Landlord
to pay Rates
and Taxes; with
a Proviso for
determining the
Term, &c.

IN WITNESS, &c.

No. VI.

AGREEMENT FOR THE LEASE OF COPYHOLD LANDS. (a)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Agreement by lessor to grant, and by lessee to take, a lease of the premises. 3. Lessor to endeavour to procure licence for granting the lease. 4. Lease to contain covenants from lessee to pay rent, rates and taxes; to keep and leave premises in tenantable repair; to do no act to incur a forfeiture; that lease shall contain a proviso of re-entry | <p>for nonpayment of rent, or breach of covenant.</p> <ol style="list-style-type: none"> 5. Lessor to covenant for peaceable enjoyment; to indemnify lessee from all outgoing in respect of the copyhold premises. 6. Proviso that if lessor is unable to obtain a licence, lessee shall enjoy from year to year during the said term. 7. Instrument to operate as an agreement, and not as a lease. |
|---|---|

Parties.

1. ARTICLES OF AGREEMENT, made and entered into
this day of A.D. 18 , BETWEEN (lessor) of, &c., for

Copyholds cannot, in the absence of custom, be leased for a longer period than a year, without licence of the lord.

Steward has no power to confer a licence.

(a) Copyhold estates cannot, in the absence of a special custom, be leased for more than a year, without the licence of the lord; and a lease by a copyholder exceeding that period, without such licence, will incur a forfeiture of his estate: (*Wells v. Partridge*, Cro. Eliz. 469; *Melwich v. Luter*, 4 Rep. 26; *Luttrell v. Weston*, Cro. Jac. 308; *Frosel v. Welch*, *ib.*, 403; *Jackman v. Hoddesdon*, *ib.*, 351; *Kensley v. Richardson*, *ib.*, 728; *Wilcock's case*, Danvers Abr. 195, pl. 9; *Cramporn v. Freshwater*, Brownl. 133; *Combe's case*, 9 Co. 75, b.; *Morris v. Twist*, 2 Mod. 79; *Doe dem. Wood v. Morris*, 2 Taunt. 52; *Fenny dem. Eastham v. Child*, 2 Mau. & Selw. 255; *Doe dem. Robinson v. Bousefield*, 1 Car. & Kir. 558.) The licence to lease must be granted by the lord himself, the steward having no authority, in the absence of a special custom, to confer a power of this nature: (Co. Cop. s. 44; Co. Law Tr. by Hawkins, p. 101; Gilb. Ten. 333.) But, notwithstanding that a lease exceeding one year is void as against the lord, it is binding as between the lessor and lessee: (*Wells v. Partridge*, Cro. Eliz. 469; *Ashfield v. Ashfield*, Sir W. Jones, 157; *Fareley's case*, Cro. Jac. 36; *Worledge v. Benbury*, *ib.*, 346; *Salisbury dem. Cooke v. Hurd*, Cow. 481; *Doe dem. Tresidder v. Tresidder*, Ga. & Dav. 70.)

himself, his heirs, executors and administrators, of the one part, and (*lessee*) of, &c., for himself, his executors, administrators and assigns, of the other part.

No. VI.

Agreement for
the Lease of
Copyhold
Lands.

It appears that the granting of a licence is arbitrary with the lord, and that a *mandamus* will not lie to compel him to do so: (*Reg. v. Hale*, 9 Ad. & Ell. 339; S. C., 1 Per. & Dav. 293.) And although it has been said (*Ballard v. Agard*, 6 Vin. Abr. 240, Copyhold (Y. C.)) that equity will compel him to give such licence, the authority cited in support of this doctrine is by no means satisfactory. But if a lord were to agree for a valuable consideration to grant a licence to demise, in such case a court of equity would undoubtedly enforce a specific performance: (*Hungerford v. Austen*, Nels. 49.)

Lord cannot be
compelled to
grant a licence.

When the licence is granted, a memorandum of such grant should be entered on the court rolls.

Memorandum
of grant.

The terms of the licence ought to be strictly followed, for, under a licence to lease from a day past, a copyholder cannot make a lease to commence from a future day: (*Jackson v. Neal*, Cro. Eliz. 395.) Yet he is not bound to grant for the exact term specified in the licence, and may therefore lease for a shorter period (*Goodwin v. Longhurst*, Cro. Eliz. 535; *Worledge v. Benbury*, Cro. Jac. 436); but he must not exceed it: (S. C., by name of *Haddon v. Arrowsmith*, Cro. Eliz. 461; S. C., by name of *Hall v. Arrowsmith*, Poph. 106.) Where a condition precedent is annexed to a licence, the performance of the condition is essential to the validity of the grant (*ib.*); but a condition subsequent has a different operation: (*ib.*, and see 1 Platt Leases, 109.)

Terms of licence
should be
strictly pursued.

If the licence has been once exercised, it will be exhausted, and a fresh demise cannot be made without a new licence being obtained for that purpose: (*Anon.*, Moo. 114, pl. 329; Gilb. Ten. 219, 220.) But a new licence will not be necessary in the case of an assignment or under-lease by the lessee: (*Johnson v. Smart*, 1 Roll. Abr. 508, pl. 14.)

Fresh licence
will be required
upon every
demise.

The lord can only confer a licence commensurate with his own interest in the manor; consequently, a licence granted by a lord who is only tenant for life, or years, will determine with his estate or term in the premises: (*Petty v. Eeons*, 1 Brownl. 40; *Munifas v. Baker*, 1 Keb. 25; S. C., by the name of *Milifax v. Baker*, 1 Lev. 26.) But as the demise is granted under the authority of the lord for the time being, although it be void as against the reversioners, it will not entitle the latter to enter the copyhold for a forfeiture: (*ib.*)

Lord can only
confer a right
commensurate
with his
interest.

By the recent statute 5 & 6 Vict. c. 108, for enabling ecclesiastical corporations, aggregate and sole, to grant leases for long terms of years, each lease granted under its provisions by any corporation, either aggregate or sole, of any lands or houses, mines, minerals, or quarries or beds, of both copyhold or customary tenure, or of any watercourses, ways, or easements, in, over, upon, or under any such land, where the copyhold or customary tenant thereof is not authorized to grant or make leases or grants for the term of years intended to be created by such lease without the licence of the lord of the manor, must be made with the consent of the ecclesiastical commissioners for England, and also of the lord for the time being of the manor of which the same lands, &c., shall be holden; and such consent shall amount to a valid licence to lease the same lands, &c., for the time for which the same shall be expressed to be demised in such lease: (sect. 20.) The consent is to be testified by such person being made a party to such deed, and duly executing the same: (sect. 21.)

Stat. 5 & 6
Vict. c. 108,
for enabling
corporations to
grant leases.

And in case the lord or lady of the manor are labouring under any legal disabilities; as where he or she shall be a minor, idiot, lunatic, or feme covert, or beyond seas, the guardian, committee, husband, or attorney, as the case may be, of such lord, but in case of a feme covert, not being a minor, idiot, or lunatic, or beyond the seas, with her consent in writing, may execute the instrument by which such consent is to be testified, in testimony of the consent of such lord, which execution is to be deemed and taken to be an execution by the lord of the manor: (stat. 5 & 6 Vict. c. 108, s. 24.)

How licence
may be obtained
when the lord
or lady of a
manor are
under legal
disabilities.

No. VI.

Agreement for
the Lease of
Copyhold
Lands.

2. THE said (lessor) doth hereby agree to let, and the said (lessee) to take, ALL that copyhold tenement [HERE CONTINUE description of parcels,] with the appurtenances thereunto belonging,

Agreement by
lessor to grant
and lessee to
take a lease of
the demised
premises.

Demise by a
copyholder, with
licence, confers
a common law
interest

Devices
attempted to
create a lease
without licence
so as not to
incur a for-
feiture.

To effect a
forfeiture there
must be an
actual demise.

A demise by a copyholder, in pursuance of a licence from the lord, confers a common law interest, capable of supporting an action of ejectment: (*Melwich v. Luter or Luther*, 4 Co. 26, a; *Cole v. Wall*, Cro. Eliz. 224; S. C., Bulstr. 328; *Jackson v. Neal*, Cro. Eliz. 224; *Wells v. Partridge*, Cro. Eliz. 496; *Goodwin v. Longhurst*, ib., 353; *Collins v. Harding*, ib., 628; *Spark's case*, ib., 676; S. C., by the name of *Sprache's case*, Mo. 569; *Kensey v. Richardson*, Cro. Eliz. 728; *Turner v. Hodges*, Hetl. 126; S. C., Litl. 233, Hutt. 101; *Erish v. Rives*, Cro. Eliz. 717; *Downingham's case*, Ow. 17, 18; *Doe dem. Tresidder v. Tresidder*, 1 Ga. & Dav. 70; and see 1 Platt Leases, 111.) Consequently, there is no necessity for the lessee to be admitted, as he does not become the tenant to the lord: (1 Wat. Cop. 368, 446, 3rd edit.)

Various plans and devices have from time to time been resorted to for the purpose of evading the required licence, without incurring a forfeiture. In *Lutterell v. Westorn or Westorne* (Cro. Jac. 303; S. C., 1 Bulstr. 215), a copyholder made a lease for a year, excepting the last day, and so from year to year, excepting the last day of every year, as long as he lived; but it seems he paid the penalty of his artifice by the forfeiture of his estate; for it was held that it was a certain lease for two years, with the exception of two days, and therefore, in effect a lease for more than a year, Williams, J., at the same time quaintly observing (1 Bulstr. 215,) that the lessor had made a snare for another, and had caught himself in the same (see 1, Platt Leases, 133.) In another case (*Mathews v. Whelton*, Cro. Car. 233; S. C., by the name of *Mathews v. Weston*, Sir W. Jones, 249,) a copyholder made on the same day three distinct leases, leaving an interval of two days between the termination of the one, and the commencement of the next succeeding lease; but this was held to be a mere fraudulent evasion of the law, and to cause a forfeiture of the copyhold. And it has also been decided, that if, under a custom to lease for three years, a copyholder lease for three years, and so from three years to three years, till nine years, it will work a forfeiture: for it is a lease for six years at the least: (*Wilcock's case*, 2 Danvers Abr. pl. 2.)

To work a forfeiture the assurance must operate as an actual demise, and not merely rest upon contract or covenant; consequently, if a copyholder, who is authorized by the custom of a manor to lease for a year without licence, grants a lease for that period, and covenants that the lessee shall enjoy the lands from year to year, for the term of seven, ten, or any other number of years, this will not create a forfeiture; for the lease is for one year only, and the covenant for quiet enjoyment during the whole period beyond that time will not convert it into a lease; for although these expressions have sometimes been construed to operate as an actual demise, yet this construction has never been allowed, where such construction would effect a forfeiture: (*Lady Montague's case*, Cro. Jac. 301; S. C., by the name of *Hamlen v. Hamlen*, 1 Bulstr. 189; *Lenthall v. Thomas*, 2 Keb. 267; *Doe dem. Goose v. Clare*, 2 T. R. 739; *Lufkin v. Nunn*, 1 New Rep. 163; 11 Ves. 170; *Fenny dem. Eastham v. Child*, 2 Mau. & Selw. 255.) The demise for a year is a proper technical demise (*Turner v. Hodges*, Hutt. 102; *Johnson v. Smart*, Roll. Abr. 508, pl. 14), the rest is merely in covenant, and would afford no defence in an ejectment brought by the lessor against the tenant after the expiration of the year. The only remedy the latter has in a case of this kind, is either to bring his action at law for breach of covenant, or to file a bill in equity for a specific performance; whereas a lease for the term of years; even without a licence, will be sufficient to enable the lessee to maintain or defend an ejectment against all persons except the lord: (*Doe dem. Robinson v. Bousefield*, sup.)

And even where the demise exceeds a year, if qualified with a proviso that the lord shall give his licence and consent to the same, the excess will not be

for the term of seven years, to commence and be computed from the 24th day of June next, if the lord or lady of the manor of whom the said premises are holden will grant his or her licence to the said (lessor) for that purpose, at the yearly rent of 65*l.*, payable by four equal quarterly payments, clear of all rates, taxes and impositions whatsoever, on the 29th day of September, the 25th day of December, the 25th day of March, and on the 24th day of June; the first quarterly payment to be made on the 29th day of September next.

No. VI.

Agreement for
the Lease of
Copyhold
Lands.

3. AND the said (lessor) doth hereby further agree to use his utmost endeavours, and at his own costs, to obtain a sufficient licence from the lord or lady of the said manor for the granting of the said lease.

Lessor to
endeavour to
procure licence
for the said
lease.

4. AND IT IS HEREBY FURTHER AGREED that the said lease shall contain a covenant from the said (lessee) for payment of the said yearly rent, at the several days hereinbefore appointed for

Lease to contain
covenants from
lessee for pay-
ment of rents,
rates, and taxes.

construed as an actual demise, for the obtaining the lord's licence will be considered as a condition precedent to the grant of the further estate. This was decided in the case of *Luffkin v. Nunn*, 1 New. Rep. 163; S. C., under the name of *Doe dem. Nunn v. Luffkin*, 4 East, 221; S. C., 1 Smith, 99; 11 Ves. 170.) There a copyholder in 1795 demised his copyhold to J. S. to hold for one year, and at the end of the said term of one year, for and during the term of thirteen years more (in all fourteen years), if the lord would give licence and consent, and so that the same should not become forfeit, or liable to be forfeited. The lease contained a covenant for quiet enjoyment during the term aforesaid; and many covenants and provisos applicable only to a lease for several years; but it was nevertheless held that the lease conferred an interest for one year certain and no more, and it was held, also, as before observed, that the lord's licence (which was afterwards refused) constituted a condition precedent to the grant of the further estate: (see also *Fenny dem. Eustham v. Child*, 2 Mau. & Selw. 255.)

Lease exceeding
a year, if qual-
ified with a
proviso that it
shall depend
upon the lord's
giving his
licence, will be
no forfeiture.

In some manors, however, the custom will authorize the granting of leases without licence for a longer period than a year, sometimes, indeed, even for a life and forty years over: (*Anon.*, Mo. 8, pl. 27; 1 Platt Leases, 110.) In the manor of Highbury, in Middlesex, the custom warrants the granting a lease for any term not exceeding twenty-one years: (*Rawsthorne v. Bratley*, 4 Bro. C. C. 475.) And in the manors of Stepney and Hackney, in the same county, the copyholders are authorized to grant leases without licence for any term not exceeding thirty-one years and four months in possession, so that such leases be presented to the homage, and entered on the court rolls, at the first or second general court met after the making thereof: (Scriv. Cop. 544, 3rd edit.) And in many manors the custom allows the granting of leases for three years with a licence: (*Wells v. Partridge*, Cro. Elia. 469.) But in some manors even the leasing for one year without the lord's licence is said to be prohibited: (1 Prest. Abs. 202.)

In some manors
the custom
authorizes the
granting of
leases for a
longer term
than one year,
without licence.

No. VI.

*Agreement for
the Lease of
Copyhold
Lands.*

To keep and
leave premises
in tenantable
repair.

To do no act to
incur a for-
feiture.

That lease shall
contain a pro-
viso of re-entry
for nonpayment
of rent, or breach
of covenant.

payment thereof; AND also for the payment of all rates, taxes and assessments whatsoever which, during the said term, shall be made on the said premises, or on the tenant or occupier thereof; and also to keep and leave the said tenement and premises in good and tenantable repair, reasonable wear and tear, and accidents by fire, flood, storm or tempest only excepted. AND also that the said (*lessee*) will not do or permit any act, deed, matter or thing whatsoever, whereby, or by reason or means whereof the estate and interest of the said (*lessor*) in the said copyhold tenement and premises, or any part thereof, can, shall or may be or become forfeited or void, or otherwise prejudicially affected. AND ALSO that the said lease shall contain a proviso for re-entry for nonpayment of the rent for the space of twenty-one days after the same shall become payable, or in case of nonperformance of any of the covenants in the said lease to be contained, and on the part of the said (*lessee*), his executors, administrators or assigns, to be observed and performed.

Lessor to cove-
nant for peace-
able enjoyment.

To indemnify
lessee against
all outgoings
in respect of
the copyhold
premises.

5. AND IT IS HEREBY MOREOVER AGREED that the said lease shall contain a covenant on the part of the said (*lessor*) for peaceable and quiet enjoyment by the (*lessee*), his executors, administrators and assigns during the said term, subject to the rents and covenants of the said lease. AND ALSO to indemnify the said (*lessee*), his executors, administrators and assigns, from all rents, outgoings, payments, duties, suits and services to be paid or rendered to the lord or lady of the said manor for or in respect of the said copyhold premises.

Proviso that if
lessor is unable
to obtain licence,
lessee shall
enjoy from year
to year during
the said term.

6. PROVIDED ALWAYS, that in case the (*lessor*) shall be unable to obtain such licence as aforesaid, these presents shall be void, as far as relates to the demising of the said premises for the said term of seven years and shall be construed to be an agreement for the demise of the said premises for the term of one year only, to commence and be computed as aforesaid, and as an agreement that the said (*lessor*), his heirs and assigns, will permit the said (*lessee*), his executors, administrators and assigns, peaceably and quietly to hold and enjoy the said tenements and premises, with the appurtenances, from year to year, until the expiration of the said term of seven years hereinbefore agreed to be granted as

aforesaid, at the rent aforesaid, payable on the several days and times hereinbefore mentioned.(b)

No VI.

Agreement for
the Lease of
Copyhold
Lands.

7. AND it is hereby lastly agreed that this instrument shall operate as an agreement for a lease, and not as a lease.

IN WITNESS, &c.

(b) A covenant or agreement that a lessee shall occupy copyhold premises for a longer period than a copyholder can grant a lease, without the licence of the lord, will not create a forfeiture. To have that operation there must be an actual demise; and at the present day there is no danger of an agreement under hand producing that effect, as the recent statute of the 8 & 9 Vict. c. 106, expressly enacts that a lease required to be in writing, of any tenements or hereditaments, made after the 1st day of October, 1845, shall be void at law, unless made by deed; so that no instrument now made, however worded, unless it be under seal, can be treated as a lease: (sect. 3; and see 1 Hughes Pract. Sales, 510, 511, 2nd edit.)

SEE THE FORM of a licence to demise, next precedent.

No. VII.

FORM OF LICENCE TO DEMISE COPYHOLDS.

Memorandum
of licence to
demise.

BE IT REMEMBERED, that on the day of in the year 18 ; (*A. B.*), Esquire, lord of the manor of H—, in the county of S—, by (*steward*), gentleman, steward of the said manor, HATH granted to (*lessor*) one of the customary tenants of the said manor, licence to demise and lease to any person or persons, (*a*) ALL and singular the copyhold or customary lands, tenements, and premises whatsoever and wheresoever, of him the said (*lessor*), situate within the said manor, and holden of the same by copy of court roll, or any part or parcel thereof with the appurtenances, for the term of years, or any other term not exceeding that period, to begin and be computed from the

Reservations of
fines, &c.

day of next: SAVING AND RESERVING unto the lord or lords, lady or ladies, for the time being of the said manor, all, and all manner of fines accruing upon the death or alienation of any customary tenant of the said premises, not only according to the present actual annual value of the said premises, but also according to the actual value of the same at the time when such fine shall become due and payable; and this, whether such value shall arise from improvements made in or upon the said premises by new buildings erected thereon, or otherwise.

(*a*) If the lessee is to be restricted from leasing by way of mortgage, insert—

“but not by way of mortgage.”

AND ALSO RESERVING unto the lord or lords, or lady or ladies of the said manor for the time being, all and all manner of rents, forfeitures, and other services of the said premises so due and of right accustomed, in as ample a manner and form as if this licence had not been granted. AND for this licence the said (lessor) hath paid to the said lord, the sum of 10s. [according to the custom of the said manor.](b)

No. VII.

*Form of
Licence to
Demise
Copyholds.*

*Reservation of
rents and ser-
vices.*

(b) If there is no settled fine prescribed by the customs of the manor, the words within brackets above must be omitted.

No. VIII.

AGREEMENT OR LICENCE AUTHORIZING A SEARCH FOR
MINERALS FOR THE SPACE OF ONE YEAR.(a)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Licence to search for minerals for the space of twelve months, and to raise and prepare the same for sale. 3. Render of one-fifteenth part to grantor, free of all costs, &c. 4. That grantee will duly prosecute the search, render an account of all | <ol style="list-style-type: none"> 5. That the sett is to be held upon the usual terms and conditions contained in setts granted in the same county, and to be void on the nonobservance of the terms by the grantee. |
|--|--|

[The above licence being an agreement under hand only, will be covered by a 2s. 6d. agreement stamp; but if made under seal, then a £1. 15s. deed stamp will be required.]

Parties.

1. ARTICLES OF AGREEMENT made and entered into
this day of , BETWEEN [(grantor), of &c., for himself,

Practical observations as to the distinction between a licence to work and a lease of mines.

(a) A licence to search for mines is very usual in most mining districts, and is distinguishable from a lease in many important particulars, a licence being an incorporeal hereditament conferring a mere right, and not necessarily giving a right exclusive of similar privileges in other parties, and in all cases only conferring an actual right of property in the minerals after they have been severed from the freehold and taken into the possession of the party: (*Chetham v. Williamson*, 4 East, 469; *Norway v. Rowe*, 19 Ves. 158; *Doe d. Hanley v. Wood*, 2 Barn. & Ald. 724.). Whereas a lease passes an actual interest in the thing demised, the right to which attaches even before the substance is extracted or taken. Still a licence to work mines confers such an interest in lands as is not revocable or countermandable by the grantor (*Doe d. Hanley v. Wood*, *sup.*) in the absence of a special stipulation to that effect: (*Winter v. Brockwell*, 8 East, 308; *Taylor v. Waters*, 7 Taunt. 374; *Liggins v. Ingo*, 5 Moo. & Pay. 712.)

A general licence to search does not confer an exclusive privilege.

As a general rule, a licence to search for minerals and work mines will not confer an exclusive privilege to the grantee, or deprive the grantor or persons claiming over him from exercising similar rights within the limits of the sett, provided they do not obstruct the workings of the grantee: (*Doe d. Hanley v. Wood*, 2 B. & Ald 724.)

his heirs, executors and administrators], (b) of the one part, and (grantee), of, &c., for himself, his executors, administrators and assigns, on the other part.

No. VIII.

Short Form
of Agreement
authorizing a
Search for
Minerals for
the Space of
One Year.

Hence, in an early case, where Lord Mountjoy, being seized in fee of the manor of Canford, sold in fee with the reservation, and with a covenant on the part of the purchaser that Lord Mountjoy, his heirs and assigns, might dig for ore in the lands (which were great wastes) parcel of the manor, and dig turf also for the making of alum: it was held, that notwithstanding this grant, the purchaser, his heirs and assigns, might dig also, like the case of common *sans nombre*: (Co. Litt. 165, a.; Godb. 18; 1 And. 307; 4 Leon. 147.)

In *Chetham v. Williamson* also (4 East, 469), a similar reservation of coals was made in a purchase deed, and the licence was held not to confer an exclusive licence to the coals. Lord Ellenborough, C. J., observed that no case could be named where one who had only a liberty of digging for coals in another's soil had an exclusive right to the coals, so as to enable him to maintain trover against the owner of the estate for coals raised by him; and after citing the case of Lord Mountjoy, said that those who compared it to a grant of common *sans nombre*, used that as the strongest instance to show that it could not be an exclusive right.

And in the case of *Doe d. Hanley v. Wood* (2 B. & Ald. 724), where the owner of the fee granted to A., his partners, fellow-adventurers, &c., free liberty to dig for tin and all other metals through certain lands therein described, and to raise, make marketable and dispose of the same to their own use; and to make adits, &c., necessary for the exercise of that liberty, together with the use of all waters and watercourses, excepting to the grantor liberty of driving any new adit within the lands thereby granted, and to convey any watercourse over the premises granted, habendum for twenty-one years, with a covenant by the grantee to pay one-eighth share of all ore to the grantor, and to pay all rates, taxes, &c., and to work effectually the mines during the term; and then, in failure of the performance of any of the covenants, a right of re-entry was reserved to the grantor; it was held, that this deed did not amount to a lease, but contained a mere licence to dig and search for minerals; and that the grantee could not maintain ejectment for mines lying within the limits of the sett but not connected within the workings of the grantee.

But a licence to work mines may be so worded as to confer an exclusive privilege upon the grantee, to the exclusion of all other persons, by simply inserting, in the granting part of the instrument, that the grantee shall have "full free, and exclusive liberty of searching for and working mines" within the limits of the sett thereby granted. This exclusive right, should, however, be expressed in direct terms in the granting clause; for although, if the description should fail in this respect, the intention might still be gathered from all other parts, or from the general scope of the instrument, still, it would seem that at law, the right to work would not be exclusive, but the instrument would merely create a written contract for an exclusive right, which, in equity, and in equity only, would be binding on the grantor and those claiming under him; yet it seems that if this right could be considered as included in a covenant entered into with the grantor, or if any particular recitals or expressions should suffice to constitute a legal covenant, then such a contract would, even at law, be held to run with the land, and bind the assignees of any of its profits.

Licence may be worded as to confer an exclusive right.

(b) Where the licence is given by the agent or steward, substitute for the words within brackets above—

"(agent's name), of, &c., for and on behalf of (principal's name)."

No. VIII.

*Short Form
of Agreement
authorizing a
Search for
Minerals for
the Space of
One Year.*

Licence to
search for
minerals for
the space of
twelve months,
and to raise and
prepare the
same for sale.

2. WITNESS that the said (*grantor*), (*c*) DOTH hereby give and grant unto the said (*grantee*), his executors, administrators and assigns, full and free liberty, licence and authority, for the space of twelve months, commencing from the day of the date hereof, to dig, work, mine, and search for tin, tin ore, copper, copper ore, lead, lead ore, and all other ores, metals, and metallic minerals, in, under, and throughout all [DESCRIBE *parcels over which the licence to search is to extend*], and to raise and prepare for sale all such ores, metals and metallic minerals, as shall be so found, and to make adits, pits, shafts, leats and watercourses, and all such other means and contrivances as may be deemed necessary for the purposes aforesaid, together with the use of all ways, waters and watercourses.

Signature by
agent, how far
binding.

(*c*) Although an agent, unless authorized by writing, is disabled by the Statute of Frauds (29 Car. 2, c. 3, ss. 1, 2) from creating or assigning any *legal* estate or interest, either in mines or minerals, he may, nevertheless, by signing an agreement in the name of his principal, pass an *equitable* interest in property of this description, where such an authority can be shown by usage, or the recognition of former acts of a similar nature; as, where such agent has been in the habit of granting licences or authorities of a like kind, which have been sanctioned by his principal; still, in all such cases, the agent must conform to the particular usages which have been established in the exercise of his authority, and he will not be allowed to bind his principal by the adoption of a mode of transacting business contrary to the previous regulation of an established custom, which may have been acquiesced in by the latter. "Thus," as a learned writer on the subject (Bainbridge on Mines, 92) remarks, "it is presumed, the introduction of unusual stipulations with respect to the operations of mining, or the agreement for a demise, or a licence to work for an unwarrantable period of time, will not be binding upon the owner without his consent or recognition. But agreements of this kind, may, of course, bind the other parties, and *pro tanto*, the principal. And in conclusion," the same learned writer says, "it may be submitted, that when a mining agent signs an instrument which, in its language, amount to an actual demise or lease, but which necessarily fails in conferring a legal interest for want of a written authority of the agent, such an instrument will be supported as a sufficient agreement to bind the principal;" and it seems that the principle adopted in the earlier cases (*Harrington v. Wise*, Noy, 57; *Cro. Eliz.* 486; *Maldon's case*, *Cro. Eliz.* 33; *Jackson v. Ashburner*, 5 T. R. 163; *Right d. Green v. Procter*, 4 Burr. 2208; *Doe d. Potter v. Archer*, 1 Bos. & Pull. 531), which were in favour of a present demise, has been departed from in the more recent decisions: (*Doe d. Abrahall v. Browne*, 2 Black. Rep. 973; *Tempest v. Rawling*, 13 East, 18; *Pleasant v. Higham*, 1 Roll. Abr. 848; *Goodtitle d. Estwick v. Way*, 1 T. R. 735; *Doe d. Cooe v. Clare*, 2 T. R. 739; *Doe d. Broomfield v. Smith*, 6 East, 530; *Morgan d. Dowdning v. Bissell*, 3 Taunt. 65.)

What will be
a sufficient
consideration in
equity, to sup-
port an agree-
ment.

In order, however, to obtain equitable assistance, there must always be a valuable consideration, but the render of dues, or an agreement for a money payment, will be amply sufficient for this purpose, and this, whether it does or does not actually appear on the face of the agreement: (see Bainbridge on Mines, 91.)

3. RENDERING therefore during the said term unto the said (*grantor*), his heirs or assigns, one-fifteenth share of all such ores, metals and metallic minerals as shall be raised within the limits of the sett hereby granted, the same being first spalled, tried, pitched, washed, stamped, dressed, and made merchantable, and fairly divided and laid out on the grass, at the costs of the said (*grantees*), their executors, administrators or assigns.

No. VIII.

*Short Form
of Agreement
authorizing a
Search for
Minerals for
the Space of
One Year.*

Render of one-fifteenth part to grantor, free of all costs, &c.

4. AND that the said (*grantee*) will cause such trial or search, the licence whereof is hereby granted, to be commenced within the space of one calendar month from the date hereof, and to be from thenceforth regularly carried on by at least two able-bodied miners daily during the whole of the said term hereby granted; and also that the said (*grantee*) will produce to the said (*grantor*), his heir or assigns, or his or their steward, agent or tollor, a correct account of the state of such search and trial, and of all ores, metals, and metallic minerals raised during the said term within the limits of the sett hereby granted; and also shall and will, during the said term, render unto the said (*grantor*), his heirs or assigns, the said one-fifteenth part or share of all such ores, metals and metallic minerals, so raised as aforesaid, the same being first so made merchantable as aforesaid, free from costs of raising and preparation for sale, and also free from all taxes and other impositions, except the present or any future tax on property or income.

That grantee will duly prosecute the search, render an account of all ores raised, and pay the reserved dues in respect of the same.

5. AND LASTLY, that in all other respects the usual terms and conditions contained in setts granted in the county of shall be observed and kept by the said (*grantor*) and (*grantee*); and that upon nonobservance of any of the above terms by the said (*grantee*), his executors, administrators or assigns, the licence, powers and authorities hereby granted shall cease and become absolutely void and forfeited.

That the sett is to be held upon the usual terms and conditions contained in setts granted in the same county, and to be void upon nonobservance of the terms by the grantee.

IN WITNESS whereof the said have hereunto set their hands the day and year first above written.

SECTION II.

LEASES.

- No. I.—LEASE FOR Aⁿ TERM OF YEARS, WITH USUAL COVENANTS, THE RENT BEING PAYABLE QUARTERLY, WITH A PROPORTIONATE PART OF SUCH RENT, IN CASE THE LEASE DETERMINES BEFORE ANY QUARTERLY DAY OF PAYMENT, WITH A PROVISIO FOR SUSPENSION OF THE RENT IN CASE OF ACCIDENTAL FIRE.
- No. II.—SHORT FORM OF A LEASE OF A FURNISHED HOUSE, WITH THE COACH-HOUSE, STABLES, GARDENS, SHRUBBERY, LAWN AND PLEASURE GROUNDS, FROM YEAR TO YEAR, AT A YEARLY RENT PAYABLE MONTHLY, WITH THE OPTION OF DETERMINING THE TERM BY SIX CALENDAR MONTHS' NOTICE. VARIATION WHERE A SURETY CONCURS FOR THE PURPOSE OF JOINING IN THE COVENANTS.
- No. III.—LEASE OF A DWELLING-HOUSE AND FURNITURE FOR A TERM OF YEARS, THE LESSEE TO REPAIR THE INTERIOR OF THE HOUSE, AND PRESERVE THE HOUSEHOLD FURNITURE; THE LESSOR TO REPAIR THE EXTERIOR, AND TO PAY ALL RATES AND TAXES.
- No. IV.—LEASE OF A MESSAGE AND PREMISES FOR A TERM OF FOURTEEN YEARS, DETERMINABLE AT THE OPTION OF EITHER LANDLORD OR TENANT, AT THE EXPIRATION OF THE FIRST FIVE OR SEVEN YEARS OF THE TERM, WITH SPECIAL COVENANTS FROM THE LESSEE NOT TO ASSIGN WITHOUT LICENCE, NOR CARRY ON CERTAIN TRADES UPON THE PREMISES: ALSO, COVENANTS ON THE PART OF THE LANDLORD TO KEEP THE EXTERIOR OF THE PREMISES IN REPAIR, TO REBUILD IN CASE THEY ARE DESTROYED BY FIRE OR TEMPEST. VARIATION WHERE THE PREMISES ARE ONLY TO BE OCCUPIED AS A PRIVATE DWELLING-HOUSE.
- No. V.—LEASE OF A PUBLIC-HOUSE, WITH USUAL COVENANTS; ALSO COVENANTS FROM LESSEE NOT TO ALLOW ANY BUSINESS BUT THAT OF A LICENSED VICTUALLER TO BE CARRIED ON UPON THE PREMISES, WITH A PROVISIO FOR AVOIDING THE TERM IN CASE OF THE LESSEE'S BANKRUPTCY OR INSOLVENCY. VARIATION WHERE THE LESSEE IS TO EXPEND A CERTAIN SUM IN REPAIRS, OR WHERE THE LESSOR IS TO SUPPLY WINE, SPIRITS, BEER, OR OTHER LIQUORS.
- No. VI.—LEASE FOR AN ABSOLUTE TERM OF NINETY-NINE YEARS. VARIATION WHERE THE LEASE IS DETERMINABLE UPON LIVES. ALSO, WHERE THE LEASE CONTAINS A PROVISIO FOR RENEWAL, UPON THE DROPPING OF ANY OF THE LIVES.

- NO. VII.—LEASE FOR THREE LIVES, OR FOR A TERM OF NINETY-NINE YEARS, DETERMINABLE ON THREE LIVES.
- NO. VIII.—UNDERLEASE OF A MESSAGE AND PREMISES, FOR THE RESIDUE OF AN ABSOLUTE TERM OF NINETY-NINE YEARS, SUBJECT TO THE RENTS AND COVENANTS OF THE ORIGINAL LEASE, AND OTHER USUAL COVENANTS. VARIATION WHERE THE LEASE IS DETERMINABLE ON LIVES.
- NO. IX.—LEASE FOR YEARS GRANTED BY MORTGAGEE AND MORTGAGOR, CONTAINING COMMON COVENANTS.
- NO. X.—LEASE OF COPYHOLD PREMISES, WITH THE LICENCE OF THE LORD.
- NO. XI.—LEASE OF COPYHOLD PREMISES FOR ONE YEAR, AND THENCEFORTH FROM YEAR TO YEAR, FOR THE TERM OF SEVEN YEARS, WITHOUT THE LICENCE OF THE LORD.
- NO. XII.—LEASE BY HUSBAND AND WIFE OF LANDS OF WHICH THE HUSBAND AND WIFE ARE SEISED IN HER RIGHT IN PURSUANCE OF STATUTE 32 HEN. 8, C. 28. VARIATION WHERE SUCH LEASE IS MADE BY TENANT IN TAIL IN PURSUANCE OF THE SAME STATUTE.
- NO. XIII.—LEASE BY TENANT FOR LIFE IN PURSUANCE OF A POWER CONTAINED IN A MARRIAGE SETTLEMENT.
- NO. XIV.—LEASE GRANTED BY TENANT FOR LIFE, AND THE REVERSIONER.
- NO. XV.—LEASE OF A FARM FOR A TERM OF TWENTY-ONE YEARS, CONTAINING SPECIAL COVENANTS AND EXCEPTIONS. ALSO VARIATIONS ADAPTED TO VARIOUS PURPOSES.
- NO. XVI.—SHORT FORM OF A LEASE OF A FARM. VARIATION WHERE THE RENT IS MADE TO VARY ACCORDING TO THE AVERAGE PRICE OF CORN. ALSO WHERE CORN IS RENDERED IN KIND INSTEAD OF A MONEY RENT.
- NO. XVII.—LEASE BY A DEAN AND CHAPTER OF A CATHEDRAL, IN CONSIDERATION OF THE SURRENDER OF A FORMER LEASE.

No. I.

LEASE FOR A TERM OF YEARS, WITH USUAL COVENANTS, THE RENT BEING PAYABLE QUARTERLY, WITH A PROPORTIONABLE PART OF SUCH RENT IN CASE THE LEASE DETERMINES BEFORE ANY QUARTERLY DAY OF PAYMENT, AND WITH A PROVISO FOR SUSPENSION OF THE RENT IN CASE OF ACCIDENTAL FIRE. (a)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum. 3. Habendum. 4. Reddendum. 5. Tenant to pay a proportionate part of the rent in case of the determination of the term before the day of payment. 6. Covenant by lessee for payment of rent. 7. Also to pay all rates and taxes. 8. To keep interior of premises in repair. 9. Proviso that in case of destruction of premises by fire or tempest, rent shall cease or abate. | <ol style="list-style-type: none"> 10. Covenant by lessor for quiet enjoyment during the term. 11. To keep exterior parts of buildings in repair. 12. Proviso for avoiding term for non-payment of rent or breach of covenant. |
|---|---|

Additional Clauses.

- A. Clause authorizing lessee to make reparations, and to deduct the charges out of the rent.
- B. To rebuild in case of destruction by fire or tempest.

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*lessor*) of, &c., of the one part, and (*lessee*) of, &c., of
the other part.

Practical
observations.

(a) In consequence of the low amount of stamp duty now payable under the recent Stamp Act 13 & 14 Vict. c. 97, upon leases, in comparison to the duties formerly imposed upon these instruments, it is apprehended that a preference will be given to leases in many cases where agreements were previously resorted to, chiefly for the purpose of evading the heavy stamp duties to which leases were then subjected. A lease has a decided advantage over an agreement as well in favour of tenant as of the landlord. Under a mere agreement, the tenant having no legal estate in the premises, his landlord may at any time eject him by an action at law (*Hamerton v. Stead*, 5 B. & C. 478; S. C., 5 D. & Ry. 206);

2. WITNESSETH, that in consideration of the rents and covenants hereinafter reserved and contained on the part of the said (lessee), his executors, administrators and assigns, to be paid and performed, the said (lessor) DOTH, by these presents, demise and lease unto the said (lessee), (b) (DESCRIBE parcels) with the appurtenances thereunto belonging: EXCEPTING unto the said (lessor), his heirs and assigns, free liberty of ingress, egress, and regress, once in every year on giving three clear days previous notice to the said (lessee), his executors, administrators or assigns, either with or without workmen, to examine the condition of the repairs of the said premises.

No. 1.
Lease for a
Term of Years,
with Covenants,
&c.
Testatum.

3. TO HAVE AND TO HOLD the said (short general description), with the appurtenances, unto the said (lessee), his executors, administrators and assigns, for the term of years, to be computed from the 25th day of March last.

Habendum.

4. YIELDING AND PAYING therefore yearly and every year during the said term, the yearly rent of 45*l.*, payable by four equal quarterly payments, on the 24th day of June, the 29th day of September, the 25th day of December, and the 25th day of March, the first quarterly payment to be made on the 24th day of June next.

Rolldendum.

5. AND ALSO YIELDING AND PAYING a proportionate part of the said rent for any period which may elapse between any of the aforesaid quarterly days of payment, and the period of the deter-

Tenant to pay
a proportionate
part of the
rent, in case of
the determina-
tion of the term
before the day
of payment.

whilst on the other hand the landlord, under an agreement, has no power of distraining for his rent; his only remedy in such case being by action for use and occupation (*Hegan v. Jackson*, 2 Taunt. 148; *Dunk v. Hunter*, 5 B. & A. 322; *Knight v. Bennett*, 3 Bing. 361; S. C., 11 B. Moore, 222; *Cox v. Bent*, 5 Bing. 185; S. C., 1 Moo. 381; *Reynart v. Porter*, 7 Bing. 451; S. C., 1 Moo. & Pay. 370), except indeed rent has been paid under such agreement, which, as it will create a tenancy from year to year as between landlord and tenant, will authorize the former to distrain: (*Mann v. Lovejoy*, 1 Ry. & Moo. 355.

(b) It is a common practice to annex words of limitation to the demise to the party; but this is unnecessary, no words of limitation being essential to the limitation of creation of a term of years; which, strictly speaking, it is correct to omit in the premises, and to insert in the habendum; it being the office of the premises to name the grantee and describe the parcels, and of the habendum to limit the estate and duration of the term.

As to the
limitation of
the chattels.

No. I. Lease for a Term of Years, with Covenants, &c. mination of the said term, in case the same shall happen to determine under the proviso for that purpose hereinafter contained; such proportionate rent to become payable immediately upon such determination.(c)

Covenant by lessee for payment of rent. 6. AND the said (*lessee*) doth hereby for himself, his heirs, executors and administrators, covenant with the (*lessor*), his heirs and assigns,(d) that he the said (*lessee*), his executors, administrators and assigns, will pay the said yearly rent at the several days and times aforesaid.(e)

Practical observations. (c) The object of this additional reddendum is to enable the landlord to recover a proportionate part of the rent due in case he should enter and determine the term under a proviso for re-entry, which it seems he would not otherwise be enabled to do, for, in the absence of a clause to the above effect, the landlord's entry for the forfeiture before a quarter's rent was due, would be a waiver of the rent; and the acceptance of the rent would be a waiver of the forfeiture; nor, it seems, has the Apportionment Act, 4 & 5 Will. 4, c. 22, made any alteration in the law in this respect.

(d) If the lessor is only tenant for years, substitute for "heirs" the words—"executors, administrators."

Practical remarks as to the reservation of rent. (e) If the lessor is seised of an estate of inheritance the reservation should be to him and his heirs; if possessed only of a term of years, or other chattel interest, the reddendum should be to him, his executors and administrators. Still it is not necessary to make the rent payable to any particular person; but it ought in all cases to be reserved generally during the term, for then it will become incident to the reversion, and belong to the heir, executor or assignee, who for the time being shall be the owner of the reversion: (*Whitelocke's case*, 8 Rep. 71; *Sacheverall v. Frogate*, Ventr. 161; S. C., 2 Wms. Saund. 361; 2 Roll. Abr. 450; *Bury v. Brown*, Latch. 99, 100.) An error in the reservation of the rent may cause it to become altogether inoperative, or partially to fail of effect. Hence, if the lessor having a freehold interest was to reserve the rent to himself and his executors (*Sacheverall v. Frogate*, *sup.*), or, being possessed of a term of years, was to make the reservation to himself and his heirs (*Drake v. Monday*, Cro. Car. 207), *without limiting it during the term*, in either of these cases the rent would determine with his death; for the executors in the first instance cannot have the rent, though they be named, not being the representatives of the lessor *quoad* the reversion to which the rent is annexed; and the heirs cannot have it, because they are not named at all. In the second instance, the heir cannot claim it, because he cannot succeed to the reversion, which is only a chattel, and the executors cannot have it, because there are no words to carry it to them. But if in either case the rent had been made payable during the term, it would then have devolved upon the party *actually* entitled to the reversion; and though in the first instance the executors could not have taken the rent, it would, nevertheless have devolved upon the heir as incidental to his reversion; and, in the second instance, although the heir could not have had the rent, it must have accrued to the lessor's personal representatives, as incidental to their reversionary interest. In like manner also, if a lessor were simply

7. AND ALSO shall and will pay all rates, taxes, and all other outgoings which during the said term shall be payable in respect of the said demised premises, excepting the landlord's income and property tax.

No. 1.

Lease for a Term of Years, with Covenants, &c.

Also to pay all rates and taxes.

To keep interior of premises in repair.

8. AND ALSO shall and will keep the glass of the windows, and all internal parts of the said premises in repair, and so leave the same at the end or sooner expiration of the said term (accidents by fire, flood, or tempest only excepted.)

9. PROVIDED ALWAYS, that in case the said premises or any part thereof shall at any time during the said term be destroyed or damaged by fire, flood, storm, or tempest, then the said yearly rent hereby reserved, or a just proportion thereof according to the

Proviso that in case of destruction of premises by fire or tempest, that rent shall cease or abate.

to reserve a rent to himself, or to himself and his assigns (1 Inst. 47 a.; *Wootton v. Edwin*, 12 Rep. 26), without saying, during the term, it would cease with his life 2 Wms. Saund. 367; *Shep. Touchst.* 114.) And it will be the same if the reservation be to the lessor and his heir, in the singular number, which will endure only during the lessor's life, and be void as to the heir afterwards (Co. Litt. 214 a.) But a rent may, nevertheless, be reserved to the heirs without any reservation whatever to the ancestor: (2 Prest. Con. 184; *Bac. Abr. Rent*; Co. Litt. 213 b. and note.) Yet this reservation will not be valid unless the heirs are described by that appellation; for a reservation of a rent to an heir apparent or presumptive, by his proper christian and surname, to commence at the decease of the ancestor, will be void, and this although such heir apparent or presumptive should, at the time the rent is appointed to commence, become the actual heir. Thus, in *Oates v. Frith*, Hob. 130, where a father and his son and heir apparent demised lands for years, to begin after the death of the father, rendering rent to the son, such reservation was holden to be void; for the reservation to the son, being by his proper name, was the same as if it had been to a stranger; and though he did prove to be heir, it bettered not the case by that event: (see also *Southampton v. Brown*, 6 B. & C. 718.) At the same time, there is nothing to preclude a lessor, if he wishes it, from reserving a rent to commence from and after a given time, or a given event, or to cease before the end of the term; but whenever this is done, the reversion should be to the lessor and such of his representatives as the reversion will devolve upon at his decease: (2 Prest. Con. 184.) Where, however, no reversion is left in the lessor, as in the instance of a tenant for three lives to him and his heirs, assigning over his whole estate, reserving to himself, his executors, administrators and assigns, a certain rent, it will go to his personal representatives, and not to his heirs: (*Jenison v. Lexington*, 1 P. Wms. 555.) If a tenant in tail demise for years rendering rent to himself and his heirs, it will go to the heir in tail, as being incident to the reversion, if the reversion shall descend upon him, though he may not answer the description of general heir of the lessor: (*Hardr.* 89; 1 Ventr. 168; *Com. Dig. Rent. B. 5.*) And if a person seised *ex parte maternâ*, or in any special manner makes a lease, reserving rent to him and his heirs, the rent, as incidental to the reversion, will belong to the heir inheritable to the estate descending on him. And the like rule holds with respect to the rent of lands in gavelkind and borough English: (2 Prest. Convey. 190; 2 Hughes Pract. Sales, 2nd edit.)

No. I.

*Lease for a
Term of Years,
with Covenants,
&c.*

amount of injury actually sustained, shall cease or abate so long as the same premises shall continue wholly or partly untenable or unfit for use and occupation, in consequence of such destruction or damages. And in case of any dispute between the said parties as to the amount of abatement in the said rent, or the period for which the said rent, or any part thereof, shall cease, or be suspended, the same shall be referred to two indifferent persons, one to be named by each of the said parties, who, if they cannot agree, shall call in an umpire, whose determination shall be final and conclusive on both parties. And in case either of the said parties shall fail to appoint a referee on his part, after fourteen days' notice in writing from the other party requiring him so to do, then the determination of the referee appointed by the other party shall be binding and conclusive on both parties. And the award of the said referees or referee shall be made a rule of Her Majesty's Court of Queen's Bench at Westminster.

Covenant by
lessor for quiet
enjoyment
during the
term.

10. AND the said (*lessor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*lessee*) his executors, administrators and assigns, that subject to the rents and covenants herein reserved and contained on his and their parts to be paid and performed, the said (*lessee*), his executors, administrators and assigns, shall or may hold and enjoy the said demised premises during the term hereby granted thereof, without let, eviction or disturbance by the said (*lessor*), his heirs or assigns, or any other person or persons whomsoever rightfully claiming under him.

To keep exterior
parts of
buildings in
repair.

11. AND FURTHER, that the said (*lessor*), his heirs or assigns, will, from time to time, and at all times, during the continuance of the said term, keep all the external parts of the said premises in good repair.(e)

Clause empow-
ering lessee to
make repa-
rations, and to
deduct the
charges out of
the rents.

(e) Sometimes the following clause is added to the above :

A. AND in case the said (*lessor*), his heirs or assigns, shall after notice in writing, requiring the same from the said (*lessee*), his executors, administrators and assigns, fail or neglect to keep the

12. PROVIDED ALWAYS, that if the rent hereby reserved shall be unpaid for the space of twenty-one days next after any of the days hereinbefore appointed for payment thereof, being demanded, and no sufficient distress shall be found on the said demised premises, or, if breach shall happen to be made in all, any or either of the covenants hereinbefore contained, on the part of the said (*lessee*), his executors, administrators or assigns to be performed, it shall be lawful for the said (*lessor*), his heirs or assigns, to re-enter and determine the said term hereby granted, and to hold and enjoy the said demised premises as in his or their first or former estate.

No. 1.

*Lease for a
Term of Years,
with Covenants,
&c.*

*Proviso for
avoiding term
for nonpayment
of rent or breach
of covenant.*

IN WITNESS, &c.

external parts of the said premises in good repair, as aforesaid, THEN and so often as the same shall happen. it shall be lawful for the said (*lessee*), his executors, administrators or assigns, to make such repairs of the said premises, in respect of which such default shall have been made, at his or their own charges, and deduct and retain the full amount thereof out of the rent that may then, or at any time thereafter, become due in respect of the said premises.

If the lessor is to rebuild in case the premises are destroyed by fire, add the following clause:—

B. AND ALSO in case the said premises or any part thereof shall at any time during the said term be destroyed or damaged by fire, flood, storm, or tempest, the said (*lessor*), his heirs or assigns, will, at his and their own costs, as soon as conveniently may be thereafter, rebuild and reinstate the said premises in as good a state and condition as they were in previously to such damage as aforesaid.

*To rebuild
premises in
case of their
destruction by
fire or tempest.*

No. II.

SHORT FORM OF A LEASE OF A FURNISHED MANSION, WITH COACH-HOUSE, STABLES, GARDENS, SHRUBBERY, LAWN AND PLEASURE GROUNDS, FROM YEAR TO YEAR, AT A YEARLY RENT, PAYABLE MONTHLY, WITH THE OPTION OF DETERMINING THE TERM BY SIX CALENDAR MONTHS' NOTICE. VARIATION WHERE A SURETY CONCURS FOR THE PURPOSE OF JOINING IN THE COVENANTS. (a)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum. 3. Habendum. 4. Reddendum. 5. Covenant by lessee for payment of rent. 6. To keep and leave house and furniture in proper repair. 7. To keep garden and shrubbery in proper order. 8. To deliver up possession at the end of the term. | <ol style="list-style-type: none"> 9. Not to assign or underlet without licence. 10. Lessor to have right of entry twice in every year, to examine into the state of repairs. |
|---|---|

Additional Clauses.

- A. Grant of a right of way.
- B. Lessee assigning or underletting to pay lessor a certain sum by way of fine.

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*lessor*) of, &c., of the one part, and (*lessee*) of, &c., of
the other part. (b)

Practical
observations.

(a) Although a landlord has a right to distrain upon the goods of his tenant for rent in arrear, as well in the case of a furnished as of an unfurnished house, *Newman v. Newman*, 2 N. R. 224, still this would in most instances afford a very inadequate remedy, as the house being already furnished by the landlord, the tenant would not be likely to keep much of his own furniture there; and hence it is no unusual practice, where a ready-furnished house is let, to require a surety to join in a covenant for due payment of the rent, as also for the performance of the covenants on the part of the lessee.

(b) If a surety concurs the deed must be of three parts, and the surety must be the party of the third part.

2. WITNESSETH, that in consideration of the rents and covenants hereinafter reserved and contained on the part of the said (*lessee*), his executors, administrators and assigns, to be paid and performed, the said (*lessor*) DOTH, by these presents, demise and lease unto the said (*lessee*) ALL that mansion and dwelling-house, &c., together with the coach-house, stables, outhouses, offices, gardens, shrubbery, lawn and pleasure-grounds and appurtenances thereunto belonging, (c) and also all the fixtures, household furniture, utensils and things contained in the said dwelling-house, specified and set forth in the schedule hereunto annexed.

No. 11.

*Short Form
of a Lease of a
Furnished
Mansion, &c.*

Testatum.

3. TO HAVE AND TO HOLD the said messuage and dwelling-house, coach-house, stables, out-houses, offices, garden, shrubbery, lawn, pleasure-grounds and fixtures, household furniture, utensils, and things hereinbefore described, or mentioned or referred to, and all and singular other the premises hereby demised, with their appurtenances, unto the said (*lessee*), his executors, administrators and assigns, for the term of one year, to be computed from the 24th day of June last, and so to continue until the said (*lessor*), his heirs or assigns, or the said (*lessee*), his executors, administrators or assigns, shall give six calendar months' previous notice in writing to that effect to the other of them, his executors, administrators or assigns, or heirs or assigns, as the case may be, or leaving the same at his or their last or usual place of abode or business in England.

Habendum.

(c) If a right of way is to be granted, insert here—

A. AND ALSO all that right of way, whether by day or by night, either on foot or on horseback, or with carts and carriages of every kind and description, laden or unladen, in, through, over, or across all that road or way over certain lands of the said (*lessor*), leading from the said demised premises to A., in such and the same manner as the said road or way hath been hitherto used by the said (*lessor*) for the more convenient enjoyment of the said demised premises.

*Grant of a right
of way.*

No. II.

*Short Form
of a Lease of a
Furnished
Mansion, &c.*

Reddendum.

4. YIELDING AND PAYING, therefore, yearly and every year during the said term, the yearly rent or sum of £ to be payable by twelve equal monthly payments, to be paid on the first Thursday of every calendar month, the first payment thereof to be made on the day of next. [INSERT *further reddendum of a proportionate part of the rent in case of the determination of the term before the day of payment, as in last precedent, clause 5, p. 469.*]

Covenant by
lessee for
payment of
rent.

5. AND the said (*lessee*) [doth hereby for himself, his heirs, executors and administrators, covenant with the said (*lessor*), his heirs and assigns, that he, the said (*lessee*),] (*d*) his executors, administrators or assigns, will punctually and truly pay unto the said (*lessor*), his heirs or assigns, the said yearly rent or sum of £ by twelve equal monthly payments, at the several times hereinbefore appointed for payment thereof. [INSERT *covenant to pay rates and taxes, as in last precedent, clause 7, p. 471.*]

To keep house
and furniture
in proper
repair.

6. AND ALSO that the said (*lessee*), his executors, administrators, or assigns, shall and will, from time to time and at all times during the said term, at his and their own costs, well and sufficiently maintain, repair, and keep the said dwelling-house and premises in as good a state and condition as the same are now in (fair wear and tear and accidents by fire, flood, storm, or tempest only excepted); AND ALSO shall and will, at all times during the said term, carefully preserve the fixtures and household furniture therein contained from being lost or in any way damaged, and shall and will keep and preserve the same in the like state and condition as they are at present, and make good all such articles as shall be lost or destroyed, by supplying other articles of a like kind in their stead.

(*d*) If a surety is a party, substitute for words within brackets above—

“And (*name of surety*) as surety for the said (*lessee*) do hereby for themselves, their heirs, executors, and administrators, jointly and severally covenant with the said (*lessor*), his heirs and assigns, that they the said (*lessee*) and (*surety*), or one of them.”

7. AND ALSO shall and will, at his and their own proper costs, maintain, and keep the said garden, shrubbery, lawn, and pleasure grounds in the same order and condition as the same respectively are now kept, and the fences, walls, and railings in and about the same; and also at all proper seasonable times of the year, duly cultivate, manure, preserve, cherish, and keep in health the wall and other fruit trees and shrubs; as also all plants, flowers, and roots now growing, or which shall at any time during the said term hereby granted be planted in or be growing on the said demised premises.

No. II.

*Short Form
of a Lease of a
Furnished
Mansion, &c.*

*That lessee will
keep garden and
shrubbery.*

8. AND ALSO shall and will, at the expiration or sooner determination of the said term, deliver up the said dwelling-house, garden, shrubbery, lawn, pleasure grounds, fixtures, household furniture, utensils, and things, in as good a state of preservation as the same are now in (fair wear and tear, and accidents by fire, flood, storm and tempest only excepted) and except such articles of furniture or other household utensils as may have been lost or destroyed as aforesaid,) and in lieu thereof such articles of the same description as shall have been substituted in their place, in pursuance of the covenant in that behalf hereinbefore contained; and will not remove, or suffer to be removed, from off the said demised premises, any of the said fixtures or household furniture or utensils.

*To deliver up
possession at
the end of the
term.*

9. AND ALSO that the said (*lessee*), his executors, administrators or assigns, shall not nor will at any time during the said term, assign, (e) demise or underlet, (f) or part with the possession of the

*Not to assign or
underlet without
licence.*

(e) This covenant is frequently introduced into leases for the purpose of Practical securing such a tenant as the lessor may approve of. It is, however, a mere observation. personal covenant, and does not run with the land; and though often inserted, it does not come under the description of a *common and usual* covenant. Hence, where a bill was filed for specific performance of an agreement by a landlord to grant the lease of a public-house containing the common and usual covenants, Lord Thurlow said that though the covenant not to assign without a licence might be a very usual one, where a brewer let a vintner a public-house, that would not have made it common covenant, and he held accordingly, that the landlord was not entitled to have it inserted: (*Henderson v. Hay*, 3 Bro. C. C. 632.) In *Morgan v. Slaughter*, however, Lord Kenyon seems to have entertained a different opinion, for he there held that such a covenant was a fair and usual covenant (1 Esp. N. P. C. 8.) But in *Church v. Brown*, 15 Ves. 529, Lord Eldon fully recognised the opinion expressed by Lord Thurlow

No. II.

*Short Form
of a Lease of a
Furnished
Mansion, &c.*

said demised premises, without the licence in writing of the said (lessor,) his heirs or assigns, for that purpose being first had and obtained.(g)

Lessor to have right of entry twice in every year to examine into the state of repairs.

10. AND ALSO that it shall be lawful for the said (lessor), his heirs or assigns,(h) or his or their agent or agents, twice

in *Henderson v. Hay*, above referred to, as did also Sir William Grant in *Brown v. Ruban*, 15 Ves. 529: see also *Bennett v. Womack*, 9 B. & C. 627; *Van v. Cope*, 3 Myl. & Kee. 269; *Proper v. Parker*, *ib.*, 280.)

An underlease is no breach of covenant not to assign without licence.

(f) It is necessary to provide expressly against underletting, for an underlease is no breach of a covenant not to assign without licence (*Cruso and Bugby v. Blencowe*, 3 Wils. 234; *S. C.*, Blackst. 766; *Roe d. Gregson v. Harrison*, 2 T. R. 426; *Doe v. Worseley*, 1 Camp. N. P. C. 20; *Holdford v. Hatch*, Doug. 182.)

(g) It is sometimes stipulated that if the lessee underlets he shall pay a sum of money in the nature of a fine for so doing; this is usually provided for by way of covenant from the lessee, and is usually the last entered into by him. The following clause will be found adapted to the purpose.

Lessee assigning or underletting to pay to lessor a certain sum by way of fine.

B. AND ALSO that in case the said (lessee), his executors, administrators or assigns, shall at any time or times hereafter make any assignment, underlease, or other disposition of the said demised premises, then the said (lessee), his executors, administrators or assigns, will, previously to the making of every such assignment, underlease, or other disposition, pay unto the said (lessor), his heirs or assigns, a sum of money equal to one moiety or half-part of the amount of the year's rent reserved upon such lease, underlease, or other disposition where no other consideration shall be paid for granting the same; and where any consideration shall be paid for granting such assignment, underlease, or other disposition, a sum of money, at the rate of 10*l.* for every 100*l.* so paid as such consideration money as last aforesaid, in addition to the said one moiety or half-part of one year's reserved rent as hereinbefore mentioned, but in case the reserved rent shall be merely nominal, then the said sum of 10*l.* for every 100*l.* of the said consideration money only shall be paid unto the said (lessor), his heirs or assigns.

Practical suggestions.

(h) If the lessor takes only a term of years in the premises, for "heirs or assigns," substitute—

"executors, administrators or assigns."

No. II.

*Short Form
of a Lease of a
Furnished
Mansion, &c.*

in every year during the said term, upon giving three clear days' previous notice in writing to the said (*lessee*), his executors, administrators or assigns, or leaving the same at the dwelling-house upon the said demised premises, at any convenient hour in the day time, and either with or without workmen or others, to enter into and upon the said premises in order to view the condition of the same and the state of the repairs thereof, and also of the said garden, shrubbery, lawn, fixtures, household furniture and utensils. (i) And in case the said (*lessor*), his heirs, executors, administrators or assigns, shall discover any want of reparation, or any damage, or destruction or loss, of the said articles of furniture or utensils (fair wear and tear and accidents by fire, flood, storm or tempest only excepted,) and shall give notice thereof in writing to the said (*lessee*), his executors, administrators or assigns, or leave the same at the dwelling-house upon the said demised premises, requiring him or them to make such reparations, amend such damage, or supply such loss, then the said (*lessee*), his executors, administrators or assigns will, within the space of one calendar month next after the delivery of such notice, repair and amend such damage or destruction, or supply such loss accordingly. [ADD PROVISO for abatement of rent in case of destruction of premises by fire or tempest, covenants from lessor for quiet enjoyment, and to keep exterior of premises in repair, and to rebuild in case of destruction by fire or tempest, with proviso for avoiding term, as in last precedent, clauses 9 to 12 inclusive.]

IN WITNESS, &c.

(i) The right of entry of the landlord to examine into the state of repairs is sometimes reserved by express exception as in Precedent No. I., clause 2; at others it is given by proviso as in the above form, and in others by covenant from the lessee, as in the next precedent, clause 9. In the absence of some stipulation to this effect, a lessor has no right whatever, as long as the term continues, to enter upon any portion of the demised premises for the purpose of examining into the state of the repairs: (*Barker v. Barker*, 3 Car. & Pay. 557; see also *Neale v. Wylie*, 5 Dow. & Ry. 442.) And it has been held that a covenant that a lessor may enter to see the state of repairs "at convenient times, is not broken by a refusal to admit him into certain rooms, if he has given no notice of his coming:" (*Doe v. Bird*, 6 Car. & Pay. 195.)

Practical
observations.

No. III.

LEASE OF A DWELLING-HOUSE AND FURNITURE FOR A TERM OF SEVEN YEARS: THE LESSEE TO REPAIR THE INTERIOR OF THE HOUSE AND PRESERVE THE HOUSEHOLD FURNITURE; THE LESSOR TO REPAIR THE EXTERIOR AND TO PAY ALL RATES AND TAXES.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital that lessor being entitled to the house and furniture has agreed to demise the same. 3. Testatum. 4. Habendum. 5. Reddendum for house and fixtures. 6. For household furniture. 7. Covenants from lessee, for payment of reserved rents. 8. To keep and leave demised premises in repair. 9. To permit lessor to enter to examine the state of repairs. | <ol style="list-style-type: none"> 10. Proviso for re-entry in case of non-payment of rent, or for breach of covenant. 11. Covenants from lessor that, subject to rents and covenants, lessee shall quietly enjoy. 12. To pay all rates and taxes. |
|--|---|

Additional Clause.

- A. Lessor during the last six months of the term to be allowed to place a notice to let on the premises.

Parties.

1. THIS INDENTURE, made the day of , A.D. 185 ,
BETWEEN (*lessor*), of, &c., of the one part, and (*lessee*), of, &c.,
of the other part.

Recital that
lessor, being
entitled to the
house and fur-
niture, has
agreed to demise
the same.

2. WHEREAS the said (*lessor*), being seised in fee of the mes-
suage or dwelling-house and premises hereinafter described, and
also absolutely entitled to the fixtures and household furniture
therein contained, hath agreed to demise the same to the said
(*lessee*) for the term of seven years, in manner hereinafter ap-
pearing.

Testatum.

3. NOW THIS INDENTURE WITNESSETH, that in consideration
of the rents and covenants hereinafter reserved and contained on

the part of the said (*lessee*), his executors, administrators and assigns, to be observed and performed, the said (*lessor*) DOTH by these presents, grant, demise and lease unto the said (*lessee*), ALL &c., [HERE DESCRIBE the house, &c.] AND all rights, members and appurtenances thereunto belonging, AND also all the fixtures and articles of furniture therein contained [all of which are specified and set forth in the schedule hereunder written.] (*b*)

No. III.
Lease of a House and Furniture for a Term of Seven Years; Lessee to repair interior, and preserve Furniture; Lessor to repair exterior, and pay Rates and Taxes.

4. TO HAVE AND TO HOLD the said messuage or dwelling-house, and all and singular other the premises hereinbefore described, together with the fixtures, household furniture and premises [specified and set forth in the schedule hereunto annexed], (*c*) unto the said (*lessee*), his executors, administrators and assigns, for the term of seven years, to commence from the 29th day of September last. (*d*)

Habendum to lessee for seven years.

5. YIELDING AND PAYING yearly and every year during the continuance of the said term unto the said (*lessor*) (*e*) his heirs or

Reddendum for house and fixtures.

(*b*) A schedule or inventory annexed to the deed is convenient for many purposes; but, as a stamp duty would attach upon the folios contained therein, in the same manner as if actually inserted in the body of the deed, it is often objected to on that account. When such is the case, the best plan appears to be to have duplicate catalogues or inventories of the fixtures made out, one to be signed by the lessor, and delivered to the lessee; and the other to be signed by the lessee, and delivered to the lessor. It will, of course, be the business of the lessee to see that the articles demised correspond with those set out in the catalogue or inventory. When this course is adopted, it will be better to make no allusion to the inventory in the lease, and to omit the words within brackets.

Practical observations.

(*c*) If no schedule is annexed, substitute for the words within brackets—
“therein contained.”

(*d*) If the lease is to be determinable, add

“determinable nevertheless, as hereinafter mentioned.”

(*e*) Where lands and goods are let at one entire rent, the whole will be considered as issuing out of the lands, and be transmissible accordingly (*Read or Rede v. Lawse, Lawse, or Lawse*, Dy. 212, b.; S. C., Bend. 81, pl. 127; 1 Anders. 4, pl. 9; 3 Bulstr. 291; *Croom v. Talbot*, Comb. 238; *Saury v. Brown*, Latch. 99; *Spencer's case*, 5 Rep. 17, a; *Emott v. Cole*, Cro. Eliz. 255; *Collins v. Harding*, 16. 606, 607, 622, 623; *Newman v. Anderton*, 2 Bos. & Pull. N. R. 224; *Furwell v. Dickenson*, 6 Barn. & Cres. 251; S. C., 9 Dow. & Ry. 245; *Bird v. Higgonson*, 2 Ad. & Ell. 699; S. C., 6 Ad. & Ell. 824; Gibb. Rents, 175; 2 Platt Leases, 87); consequently, although the goods would devolve upon the lessor's personal representatives, in case of his decease during the term, the

Where lands and goods are let at one entire rent, the whole rent will be considered as issuing out of the lands.

No. III.
*Lease of a
 House and Fur-
 niture for a
 Term of Seven
 Years; Lessee
 to repair
 interior, and
 preserve Furni-
 ture; Lessor
 to repair
 exterior, and
 pay Rates and
 Taxes.*
 Reddendum for
 furniture.

assigns, for or in respect of the said dwelling-house and premises, the yearly rent of 80*l.* sterling; by four equal quarterly payments, on the 25th day of December, the 25th day of March, the 24th day of June, and the 29th day of September; the first quarterly payment thereof to be made on the day of next.

6. AND ALSO YIELDING AND PAYING yearly and every year during the said term, unto the said (*lessor*), his executors, administrators or assigns, for the use of the said fixtures and articles of furniture, the sum of 100*l.* a year, in addition to the said yearly rent of 80*l.* by four equal quarterly payments, on the days and times hereinbefore appointed for the payment of such yearly rent as aforesaid.

Covenants from
 lessee and his
 surety for pay-
 ment of reserved
 rent.

7. AND the said (*lessee*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*lessor*), his heirs, executors, administrators and assigns, that he the said (*lessee*), his executors, administrators or assigns, will pay unto the said (*lessor*), his heirs, executors, administrators or assigns, the said yearly rents hereby reserved, according to the respective natures and qualities of the said premises in respect of which the same are made payable, on the days and times hereinbefore appointed for payment thereof respectively.

To keep and
 leave demised
 premises in
 repair.

8. AND ALSO that the said (*lessee*), his executors, administrators or assigns, shall and will from time to time and at all times during the said term, when and as often as occasion shall require, at his or their own costs, well and sufficiently maintain, amend, repair and preserve the said dwelling-house and premises in as good a state and condition as the same are now in (fair wear and tear,

heir, if the lands were freehold, would be entitled to receive the whole rent, and the parties entitled to the goods would derive no benefit whatever from them during the continuance of the term. To prevent this consequence, the best mode seems to be, as in the above precedent, to have two distinct renders, one to the lessor, his heirs and assigns, in respect of the lands, and the other to the lessor, his executors, administrators and assigns, in respect of the goods. By adopting this course, the two rents will be kept distinct, and thus become transmissible to the parties entitled to the property out of which the render actually arises.

and accidents by fire, flood, storm, or tempest only excepted); AND ALSO shall and will at all times during the said term carefully preserve the said fixtures and household furniture from being lost, or in any way damaged; and shall and will keep and preserve the same in the like state and condition as they are in at present, and make good all such articles as shall be broken, lost, or destroyed; and at the expiration or sooner determination of the said term, will deliver up the said messuage or dwelling-house, fixtures and household furniture, in as good a state of preservation as the same are now in (fair wear and tear, and accidents by fire, flood, storm or tempest only excepted), (except such articles as are broken, lost, or destroyed as aforesaid), and in lieu thereof, such articles as shall have been substituted in their place as hereinbefore mentioned; and shall not nor will remove or suffer to be removed any of the said fixtures or household furniture from off the said demised premises. (f)

No. III.

Lease of a House and Furniture for a Term of Seven Years; Lessee to repair interior, and preserve Furniture; Lessor to repair exterior, and pay Rates and Taxes.

9. AND ALSO that it shall be lawful for the said (*lessor*), his heirs, executors, administrators or assigns, or his or their agent or agents, twice in every year during the said term, upon giving three clear days' previous notice in writing to the said (*lessee*), his executors, administrators or assigns, or leaving the same upon the said demised premises, at any convenient hour in the day time, and either with or without workmen or others, to enter into and upon the said premises in order to view the condition of the same, and the state of the repairs thereof, and also of the said fixtures, household furniture and premises. (g) AND in case the said (*lessor*),

To permit lessor to enter to examine the state of the repairs.

(f) If the lessee is to be restrained from assigning or under-letting without licence, insert clause 9, *ante*, No. II., p. 477.

(g) If lessor is to be permitted to stick up a notice to let on the premises, then add here—

A. AND ALSO that it shall be lawful for the said (*lessor*), his heirs or assigns, at any time during the last six calendar months of the said term, to place a notice in writing on the door or in any of the windows, or other conspicuous part of the said demised premises, signifying that the same are to be let: and also for the said (*lessor*), at any time during the said last mentioned period, at

Lessor during the last six months of the term to be allowed to place a notice to let on the premises.

No. III.

Lease of a House and Furniture for a Term of Seven Years; Lessee to repair interior, and preserve Furniture; Lessor to repair exterior, and pay Rates and Taxes.

his heirs, executors, administrators or assigns, shall discover any want of reparations, or any damage or destruction, or loss of the said articles of furniture (fair wear and tear, and accidents by fire, flood, storm and tempest only excepted), and shall give notice thereof in writing to the said (*lessee*), his executors, administrators, or assigns, or leave the same upon the said demised premises, requiring him or them to make such reparation, amend such damage or destruction, or supply such loss, then the said (*lessee*), his executors, administrators or assigns will, within the space of one calendar month next after the delivery of such notice, repair and amend such damage or destruction, or supply such loss accordingly.

Proviso for re-entry in case of nonpayment of rent, or breach of covenants.

10. PROVIDED ALWAYS, and it is hereby declared, that if the said yearly rents hereby reserved, or any of them, or any part of the same, shall be in arrear for the space of thirty days next after any of the days or times whereon the same are made payable (being demanded), or if breach shall happen to be made in all, any, or either of the covenants hereinbefore contained, on the part of the said (*lessee*), his executors, administrators and assigns, to be performed; or in case the said household furniture, or any part of the same, shall be taken in execution of any process against the goods of the said (*lessee*), his executors, administrators or assigns; (*h*) THEN, for all, any or either of the causes aforesaid, it shall and may be lawful to and for the (*lessor*), his heirs, executors, administrators and assigns to re-enter on the said demised premises, and also take possession of the said fixtures and household furni-

all seasonable hours in the day-time, to enter upon the said premises, accompanied by any person or persons, for the purpose of viewing and treating for the taking of the same premises.

Landlord has no means, in the absence of some provision to that effect, to recover articles of furniture taken in execution for tenant's debt.

(*h*) This provision is an important one for lessors, when furniture is let with the house; for in the absence of a provision of this kind, the landlord, during the continuance of the term, has not the means of recovering any articles of the demised furniture, in case they shall be taken in execution for the tenant's debt: (*Ward v. Macauley*, 4 T. R. 489; *Gordon v. Harper*, 7 T. R. 9.) Nor, it seems, has the landlord any remedy against the lessee until his term has expired, unless some express stipulation or covenant to that effect is inserted in the lease. But if, as in the above proviso, the term is made to cease upon the goods being so taken in execution, then the landlord will be entitled to determine the demise, and maintain an action of trover against the sheriff for their recovery: (*Berry v. Heard*, Cro. Car. 327; *Smith v. Miller*, 7 T. R. 475.)

ture, and to repossess and enjoy the same according to the respective natures and qualities thereof, as in his and their former estate; and thereupon the said term hereby granted, as well as to the said fixtures and household furniture, as also in the said dwelling-house and premises, shall cease, determine and be void to all intents and purposes whatsoever.

No. III.

Lease of a House and Furniture for a Term of Seven Years; Lessee to repair interior, and preserve Furniture; Lessor to repair exterior, and pay Rates and Taxes.

Covenant from lessor that, subject to rents and covenants, lessee shall quietly enjoy.

11. AND the said (*lessor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*lessee*), his executors, administrators and assigns, that it shall be lawful for the said (*lessee*), his executors, administrators or assigns, he or they paying the rents hereby reserved, and observing and performing all and every the covenants, conditions and agreements hereinbefore contained, on his or their parts respectively to be paid, observed and performed, peaceably and quietly to have, hold, use, occupy, possess and enjoy the said messuage or dwelling-house, fixtures, household furniture and premises hereby demised, for the term hereby granted, without let, suit, eviction, ejection, interruption, molestation or disturbance of, from or by the said (*lessor*), or any other person or persons whomsoever, rightfully claiming or to claim by, from, through, under or in trust for him or them. [INSERT HERE covenant from the lessor to keep the exterior of the premises in repair, *ut ante*, No. I., clause 2, p. 469.]

12. AND FURTHER that the said (*lessor*), his heirs, executors, administrators or assigns, shall and will from time to time and at all times during the said term, pay and discharge all rates, taxes, assessments and impositions whatsoever, which now are, or shall or may at any time or times hereafter during the said term be taxed, assessed or imposed upon the said demised premises. or any part thereof, or upon the owner or occupier in respect thereof. (i)

To pay all rates and taxes.

(i) When the lessor is intended to pay the rates, as well as the taxes, it will be necessary to extend the clause to charges to which the owner or occupier will be liable, as well as those which will be chargeable on the land; for a covenant by a lessor to pay all the taxes on the land demised (*Theed v. Starkey*, 8 Mod. 314); or to indemnify the lessee against all duties, charges and taxes whatsoever to be imposed upon the lands, except tithes (*Case v. Stephens*, Fitz. 279). will not include church and poor rates: for these are charges upon the person or occupier, and not on the lands: (2 Platt Leases, 172; *Anon.* 4 Mod. 148; *Jeffrey's case*, 5 Co. 66, b; *Page v. Crompton*, Cro. Eliz. 639; *Rolls v. Gells*, Practical suggestions.)

No. III.

*Lease of a
House and Fur-
niture for a
Term of Seven
Years; Lessee
to repair
interior, and
preserve Furni-
ture; Lessor
to repair
exterior, and
pay Rates and
Taxes.*

AND ALSO shall and will allow the said (*lessee*), his executors, administrators or assigns, to deduct and retain, out of the rent of the said premises, all such sum and sums of money as the said (*lessee*), his executors, administrators or assigns, shall pay on account of such rates, taxes, assessments and impositions, whether the same shall or shall not have accrued and become payable for or in respect of the same period out of which the same shall be deducted, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

[If a schedule is intended to be added it should be inserted here.]

451; *Milward v. Coffin*, 2 W. Blackst. 1330; *Rex v. St. Luke's Hospital*, 2 Bur. 1063; *Rex v. St. Bartholomew's Hospital*, 4 Bur. 2439; *Harrison v. Bulcock*, 1 H. Blackst. 72.)

No. IV.

LEASE OF A MESSAGE AND PREMISES FOR A TERM OF FOURTEEN YEARS, DETERMINABLE AT THE OPTION OF LANDLORD OR TENANT AT THE EXPIRATION OF THE FIRST FIVE OR SEVEN YEARS OF THE TERM; WITH SPECIAL COVENANTS FROM THE TENANT NOT TO ASSIGN OR UNDERLET WITHOUT LICENCE, NOR TO CARRY ON CERTAIN TRADES UPON THE PREMISES. ALSO COVENANT ON THE PART OF THE LANDLORD TO KEEP THE EXTERIOR OF THE PREMISES IN REPAIR; TO REBUILD, IN CASE THEY ARE DESTROYED BY FIRE OR TEMPEST. VARIATION, WHERE THE PREMISES ARE ONLY TO BE OCCUPIED AS A PRIVATE DWELLING HOUSE.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum. 3. Habendum. 4. Covenant from lessee for payment of rent and taxes. 5. To keep and leave premises in tenantable repair. 6. Not to carry on noisome or offensive trades, nor bring combustible materials on the premises. 7. Proviso enabling either lessor or lessee to determine the term at the expiration of the first five or seven years thereof. 8. Covenant from lessor to rebuild | <p>in case premises are destroyed or damaged by fire or tempest.</p> <ol style="list-style-type: none"> 9. That lessor will keep exterior of demised premises in repair. <p style="text-align: center;">—</p> <p><i>Additional and substituted Clauses.</i></p> <ol style="list-style-type: none"> A. Lessee to pay increased rent in case he allows any kind of business to be carried on upon the premises. B. Covenant from lessee that no kind of business whatever shall be carried on upon the demised premises. |
|---|---|

1. THIS INDENTURE, made the day of A.D. 18 , Parties.
BETWEEN (lessor) of, &c., of the one part, and (lessee) of, &c., of
the other part.

2. WITNESSETH, that in consideration of the rents and cove- Testatum.
nants hereinafter reserved and contained, on the part of the

No. IV.

*Lease of a
Messuage and
Premises for
fourteen Years,
determinable at
the option
of Landlord or
Tenant, at the
expiration of
the first five or
seven Years of
the term;
with special
Covenants.*

Habendum.

said (*lessee*), his executors, administrators and assigns, to be paid and performed, HE the said (*lessor*) DOTH by these presents grant, demise and lease unto the said (*lessee*), ALL [HERE DESCRIBE *parcels*], (a) TOGETHER with all cellars, vaults, areas, ways, paths, passages, sinks, gutters, sewers, drains, pipes, waters, water-courses, lights, easements, profits, privileges, commodities, advantages, rights, members and appurtenances whatsoever to the said premises belonging or appertaining.

3. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereby demised, with their appurtenances, unto the said (*lessee*), his executors, administrators and assigns, for the full term of fourteen years from the 29th day of September now last past (subject nevertheless to a proviso for determining the said term at the end of the first five or seven years thereof, at the option of the said (*lessor*) or (*lessee*), in manner hereinafter appearing.) [INSERT *reddendum, ut ante*, No. I., clauses 4 and 5, p. 469.](b)

(a) If part only of the house is let, then substitute—

“All those rooms consisting of (DESCRIBE *the particular rooms*), being part of a messuage or dwelling-house, situate, &c. Together with free liberty of passing and repassing at all times to and from the said (*description of rooms*).”

(b) Sometimes an increased rent is reserved in case the premises are used for any other purpose than a private dwelling-house, as in the following clause—

Lessee to pay increased rent in case he allows any kind of business to be carried on upon the premises.

A. AND in case the said (*lessee*), his executors, administrators, or assigns, shall at any time during the continuance of the term hereby granted convert the said demised premises or any part thereof, or use, occupy, or employ, or permit the same to be used, occupied, or employed as a shop, warehouse, or store, for the purpose of carrying on any art, manufactory or trade, or as a tavern, inn, public-house, or beer-shop, or as a school, or a lunatic asylum, or as a hospital or dispensary, or permit or suffer the said demised premises, or any part thereof to be used otherwise than as a private dwelling-house, without the licence in writing of the said (*lessor*), his heirs or assigns, then YIELDING AND PAYING unto the said (*lessor*), his heirs or assigns, during such

4. AND ALSO that the said (*lessee*), his executors, administrators and assigns, shall and will, from time to time and at all times during the continuance of the said term hereby granted, pay and discharge all rates, taxes and assessments whatsoever, which shall be made on the said premises, or on the tenant or occupier thereof, including also the land tax, and the paving, lighting and sewers rates, as and whenever the same shall become due and payable.

5. AND ALSO shall and will, at his or their own costs, from time to time and at all times during the continuance of the said

No. IV.

*Lease of a
Messuage and
Premises for
fourteen Years,
determinable at
the option
of Landlord or
Tenant, at the
expiration of
the first five or
seven Years of
the term;
with special
Covenants.*

time as the said premises or any part thereof shall be so used otherwise than as a private dwelling-house, the further yearly rent of 500*l.*,* to be paid and payable quarterly by four equal quarterly portions, on the same quarter days in every year as are hereinbefore appointed for payment of the said yearly rent hereinbefore reserved; the first quarterly payment to be made on such of the said quarterly days of payment as shall next happen after all or any part of the said demised premises shall be so used as aforesaid. [INSERT covenant for payment of rent, *ut ante*, No. I., clause 6, p. 470.]

Covenant from
lessee for pay-
ment of rent
and taxes.

To keep and
leave premises
in tenable
repair.

* The object of reserving the increased rent is for the purpose of preventing the premises from being used in any other manner than as a private residence, and therefore such a large amount is reserved as actually to prohibit the property from being occupied in any other manner, and which may be effectually carried out, as in cases of this nature the sum reserved is not viewed in the light of a penalty, but as the actual amount or damage fixed by the parties as a satisfaction for a breach; and, therefore, a plea that the lessor, with full knowledge of the supposed breaches of covenant accepted the principal rent up to a certain period, which covered the time alleged in the breach, as and for all the rent then due; without demanding the payment of such additional rent, and thereby waived his right to recover any *nomine pena* or penalty, or such additional rent, was holden bad on general demurrer: (*Denton v. Richmond*, 1 Crompt. & Moes. 734; S. C., 3 Tyrw. 630; 12 Platt on Leases, 107. See also *Woodward v. Giles*, 2 Vern. 119; *Benson v. Gibson*, 3 Atk. 395; *Rolfe v. Peterson*, 6 Bro. P. C. 410; *Farrant v. Olmins*, 3 B. & Ald. 692; *Bringloe v. Goodson*, 4 Bing. N. C. 726; *Jones v. Green*, 3 You. & Jerv. 298.) And where a penal rent of 50*l.* per annum was reserved for every acre which the lessee should plough up and convert into tillage, and the jury in opposition to the direction of the judge who tried the cause, gave a verdict for damages less than the amount of the increased rent, the court made a rule for a new trial absolute without payment of costs: (*Farrant v. Olmins*, *sup.*) Neither will equity relieve a lessee from payment of the increased rent: (*Woodward v. Giles*, *sup.*; *Rolfe v. Peterson*, *sup.*; *Aylet v. Dodd*, 2 Atk. 238; *Benson v. Gibson*, 3 *ib.* 395; *Lowe v. Peers*, 4 Bur. 2225; S. C., Wils. 364; *Birch v. Stephenson*, 3 Taunt. 469, 473); although it is their daily practice to relieve against penalties: (2 Platt on Leases, 108.) Nor will equity restrain a lessee from violating a covenant of this kind: (*Woodward v. Giles*, *sup.*); the increased rent being considered as a satisfaction agreed upon between the parties for the amount of the injury done. Practical remarks.

No. IV.

*Lease of a
Messuage and
Premises for
fourteen Years,
determinable at
the option
of Landlord or
Tenant, at the
expiration of
the first five or
seven Years of
the term;
with special
Covenants.*

term hereby granted, well and sufficiently sustain and keep in repair the glass windows, window shutters, doors, locks, fastenings, partitions, ceilings, floors, chimney pieces, privies, gutters, sinks, drains, sewers, cisterns, pipes, watercourses, and all the interior portion of the said hereby demised premises, in as good a state and condition as they are now in, fair wear and tear, and accidents by fire, flood, storm or tempest excepted. AND ALSO shall and will at the expiration or sooner determination of the said term hereby granted, so yield and deliver up the said demised premises in such repair as aforesaid, unto the said (*lessor*), his heirs or assigns. [INSERT *proviso authorizing lessor to enter to examine into the state of repairs, ut ante*, No. III., clause 9, p. 483.] [INSERT *covenant not to assign without licence, at ante*, No. II., clause 9, p. 477.]

Not to carry on
offensive or
noisome trades,
nor bring com-
bustible mate-
rials on the
premises.

6. AND ALSO that the said (*lessee*), his executors, administrators or assigns, shall not nor will at any time during the continuance of the said term hereby granted, use or exercise, or permit to be carried on upon the said demised premises, or any part thereof, the trade or business of a tavern keeper, licensed victualler, retailer of spirituous liquors, beer-shop keeper, eating-house keeper, oyster seller, tea or coffee-house keeper, tripe boiler or seller, vender of coals, tallow chandler, tallow melter, soap boiler, sugar baker, working hatter, common brewer, distiller, slaughterman, butcher, baker, dyer, fellmonger, fishmonger, pipemaker, trunkmaker, working brazier, tinman, oilman, plumber, painter, smith, farrier, tanner, tawer, currier, or any other noisome or offensive trade or business whatsoever, or convert the said premises into a school, or into a private lunatic asylum, or bring, or suffer to be brought, placed or deposited on the said premises, or upon any part of the same, any pitch, tar, turpentine, vitriol, tallow, oil, flax, hemp, or gunpowder, or any goods or materials of such a nature or quality as may in any way tend to impeach or invalidate any insurance against damage by fire, now or hereafter to be made of the said premises.(e) [INSERT *proviso for avoiding term for nonpayment of rent, or breach of covenant, ut ante*, No. I., clause 12, p. 473.]

Practical
directions.

(e) If it is intended that the restriction against trade shall be general, it will be better not to specify any particular kind of trade or business, but to state

7. PROVIDED ALSO, and it is hereby declared and agreed, that it shall be lawful for the said (*lessor*), his heirs or assigns, or for the said (*lessee*), his executors, administrators or assigns, to determine the said term of fourteen years at the expiration of the first five or seven years thereof, upon giving or delivering to the other of them, his executors, administrators or assigns, or his heirs or assigns, as the case may be, six calendar months' previous notice in writing, or leaving the same at his or their last usual place of abode in England; and that in such case the said term hereby granted, these presents, and every clause, matter and thing herein contained, shall, immediately upon the expiration of the said notice, cease, determine and be void to all intents and purposes whatsoever, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. [INSERT proviso for lessor for abatement of rent in case of destruction of premises by fire, &c., *ut ante*, No. I., clause 9, p. 471.] [INSERT covenant by lessor for quiet enjoyment, *ut ante*, No. I., clause 10, p. 472.]

No. IV.

Lease of a Messuage and Premises for fourteen Years, determinable at the option of Landlord or Tenant, at the expiration of the first five or seven Years of the term; with special Covenants.

Proviso enabling either lessor or lessee to determine the term at the expiration of the first five or seven years thereof.

8. AND ALSO that in case the said premises, or any part thereof, shall be destroyed or damaged by fire, flood, storm or tempest during the said term, he the said (*lessor*), his heirs or assigns, shall and will, at his or their own costs, as soon as conveniently may be thereafter, rebuild and reinstate the said premises in as good a state and condition as the same premises were in previous to such destruction or damage as aforesaid.

Covenant from lessor to rebuild in case premises are destroyed or damaged by fire or tempest.

generally that no kind of business whatever shall be carried on upon the premises, which are only to be used as a private dwelling. The following clause will be found adapted to this purpose, although, generally speaking, the object will be better attained by reserving an increased rent as contained in note (b), *ante*, p. 488 :—

B. "AND ALSO that the said (*lessee*), his executors, administrators or assigns, shall not, at any time during the continuance of the said term hereby granted, convert the said premises, or any part thereof, into, or use, occupy, or employ, or permit the same to be used, occupied, or employed, as a shop, warehouse or store, for the purpose of carrying on any art, manufactory, trade or business whatsoever; nor use, nor permit, nor suffer the said demised premises, or any part thereof, to be used otherwise than as a private dwelling-house."

Covenant from lessee that no kind of business whatever shall be carried on upon the demised premises.

No. IV.

*Lease of a
Messuage and
Premises for
fourteen Years,
determinable at
the option
of Landlord or
Tenant, at the
expiration of
the first five or
seven Years of
the term;
with special
Covenants.*

To keep exterior of demised premises in repair.

9. AND MOREOVER that he the said (*lessor*), his heirs or assigns, shall and will from time to time and at all times during the continuance of the said term hereby granted, at his or their own costs and charges, sustain and keep in repair the exterior walls, roof, and outside of the said demised premises; and also shall and will, once at least in every four years during the said term, paint in good and proper oil colour the doors, window frames, railings, and all other the outside wood and iron-work of the said premises. AND in case the said (*lessor*), his heirs or assigns, shall, after notice in writing from the said (*lessee*), his executors, administrators or assigns, fail, neglect or refuse to repair and paint the said premises, or any part thereof, in pursuance of the aforesaid covenant, then and in such case, and so often as the same shall happen, it shall be lawful for the said (*lessee*), his executors, administrators or assigns, to make such repairs, and to paint the said premises, in respect of which such default shall so be made, and all such expenses as he or they may incur in so doing it shall be lawful for him or them to deduct out of the rent then or thereafter to grow due, and the receipts for the money so expended as aforesaid shall be sufficient vouchers and discharges for the same.

IN WITNESS, &c.

No. V.

LEASE OF A PUBLIC-HOUSE FOR SEVEN YEARS, WITH USUAL COVENANTS; ALSO COVENANT FROM LESSEE NOT TO ALLOW ANY BUSINESS BUT THAT OF A LICENSED VICTUALLER TO BE CARRIED ON UPON THE PREMISES; WITH A PROVISIO FOR AVOIDING THE TERM FOR NON-PAYMENT OF RENT, OR BREACH OF COVENANT, OR IN CASE OF THE LESSEE'S BANKRUPTCY OR INSOLVENCY. VARIATION, WHERE THE LESSOR IS TO SUPPLY WINE AND SPIRITS, BEER, OR OTHER LIQUOR.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum. 3. Habendum. 4. Covenant from lessee not to suffer any business but that of an innkeeper to be carried on upon the premises. 5. Proviso for determining the term in case of non-payment of the rent, | <p>breach of covenant, or in case of the lessee's bankruptcy or insolvency.</p> <hr style="width: 10%; margin: 10px auto;"/> <p><i>Additional and substituted Clauses.</i></p> <p>A. Lessee to expend a certain sum in repairs and improvements.</p> <p>B. Covenant to purchase all wine and spirits of the lessor.</p> |
|---|---|

1. THIS INDENTURE, made the day of A.D. 18 , Parties.
BETWEEN (*lessor*), of, &c., of the one part, and (*lessee*), of, &c.,
innkeeper, of the other part.

2. WITNESSETH, that in consideration of the rents and cove-
nants hereinafter reserved and contained on the tenant or lessee's
part to be paid and performed, HE the said (*lessor*) BOTH by these
presents demise and lease unto the said (*lessee*) ALL that mes-
suage or public-house situate, lying and being in H—— Street,
in —— aforesaid, and called the White Hart Inn, with the out-
buildings, yard, stables, coach-houses and appurtenances thereunto

No. V. belonging, as the same is now in the occupation of the said (*lessee*.)
Lease of a Public-house for Seven Years, with usual Covenants; also Covenant not to allow any Business but that of a Licensed Victualler; with Proviso, &c. EXCEPTING unto the said (*lessor*), his heirs and assigns, (a) and his and their workmen and agents, twice in every year, upon giving the said (*lessee*), his executors, administrators or assigns, three clear days' previous notice in writing, or leaving the same on the said demised premises, free liberty of ingress, egress, and regress into, out of, and from the said premises, for the purpose of viewing and examining the state and condition of the repairs thereof.

Habendum.

3. TO HAVE AND TO HOLD the said messuage or public-house, and all and singular other the premises hereinbefore described and hereby demised, with the appurtenances, unto the said (*lessee*), his executors, administrators and assigns, from the 29th day of September last past, for and during and unto the full end and term of seven years. [INSERT *reddendum, ut ante*, No. I., clauses 4 and 5, p. 469, AND THEN ADD *covenant from lessee for payment of rent and taxes; to keep and leave demised premises in repair, ut ante*, No. I., clauses 6, 7, and 8, pp. 470 and 471; (b) *that lessee will not assign or underlet without licence, ut ante*, No. II., clause 9, p. 477.]

(a) If the property is leasehold, for "heirs and assigns," substitute—
 "executors, administrators and assigns."

(b) If the lessee is to expend a certain sum of money in repairs and improvements, the following clause should be substituted for keeping and leaving premises in repair.

Lessee to
 expend a
 certain sum in
 repairs and
 improvements.

A. AND ALSO that the said (*lessee*), his executors, administrators or assigns, will within the first three years of the said term hereby granted, lay out the sum of £ , in the repairs and improvements of the said demised premises, in a manner to be approved of by such person or persons as the said (*lessor*), his heirs or assigns shall direct to survey the same premises; and also that the said (*lessee*), his executors, administrators or assigns, will, whenever thereunto requested by the said (*lessor*), his executors, administrators or assigns, produce and deliver to him or them, the bills, receipts, and vouchers of the several tradesmen, workmen, and others employed in making such reparations and improvements as aforesaid, for the several sums of money paid to them on account

4. AND ALSO that the said (*lessee*), his executors, administrators or assigns, shall not nor will at any time, during the continuance of the said term hereby granted, convert the said messuage into a private dwelling-house, or use or permit the same to be used for any other purpose than for carrying on the business of an inn, tavern, or public-house; AND shall and will manage and conduct such business in a proper, regular and orderly manner, so as to afford no ground, cause or pretence for discontinuing the licence thereof, and will from time to time apply for and do all necessary acts for obtaining a renewal of the said licence; and shall and will in all things use his and their best endeavours to increase and extend the custom of the said business.(c)

No. V.
Lease of a Public-house for Seven Years, with usual Covenants; also Covenant not to allow any Business but that of a Licensed Victualler; with Proviso, &c.

Covenant from lessee not to suffer any business but that of an innkeeper to be carried on upon the premises.

5. PROVIDED ALWAYS, that if the said yearly rent of 80*l.* shall be behind and unpaid for the space of twenty-one days next after any or either of the said days hereinbefore appointed for payment

Proviso for avoiding the term in case of nonpayment of rent, breach of covenant, or in case of lessee's bankruptcy or insolvency.

of such repairs and improvements; and do and shall at all times during the continuance of the said term hereby granted, keep all the interior portion of the said demised premises in proper tenable repair, and so leave the same at the end or sooner expiration of the said term.

(c) If the lessor is a wine and spirit merchant, insert—

B. AND ALSO that the (*lessee*), his executors, administrators or assigns, shall not nor will at any time during the continuance of the said term, buy or sell, either directly or indirectly, in, upon or out of the said demised premises, any [wine, brandy, rum, hollands, geneva, whiskey, or any wines, cordials, or spirits whatsoever*], unless the same shall have been previously *bonâ fide* purchased of the said (*lessor*), his executors, administrators or assigns; provided he or they shall at any such time deal in such [wines, spirits and liquors*], and shall be willing to supply the same at the fair current market price thereof.

Covenant to purchase all wine and spirits of the lessor.

* If the lessor is a brewer, substitute for words within brackets—

“ale, beer, porter, or stout.”

No. V.

*Lease of a
Public-house
for Seven Years,
with usual
Covenants; also
Covenant not
to allow any
Business but that
of a Licensed
Victualler; with
Proviso, &c.*

thereof (being demanded and not paid when demanded), or if breach shall happen to be made by the said (*lessee*), his executors, administrators or assigns, in all, any or either of the covenants, conditions and agreements herein contained, on his and their parts to be observed and performed; or ~~or~~ in case the said (*lessee*), his executors, administrators or assigns, or any of them, shall become bankrupt or bankrupts(*d*), or shall file any petition for the purpose of taking the benefit of any Act of Parliament passed, or to be passed for the relief of insolvent debtors, or shall assign his or their estate or effects, or any part thereof, or shall enter into any composition for the payment of his or their debts, or shall suffer any execution to be levied of his or their goods and chattels, THEN and thereupon, for all, any or either of the causes aforesaid, it shall be lawful for the said (*lessor*), his heirs or assigns(*e*), into and upon the said demised premises, or any part thereof in the name of the whole, to enter, and the same to have again, repossess and enjoy, as in his or their original estate, in the same manner to all intents and purposes as if these presents had never been made or executed, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. [INSERT HERE *proviso for cesser or abatement of rent, ut ante*, No. I., clause 9, p. 471; *in case demised premises shall be destroyed by fire or tempest. ALSO covenant from lessor for quiet enjoyment, ut ante*, No. I., clause 10, p. 472; *ALSO that in case premises are destroyed by fire or tempest, lessor will rebuild; and that lessor will keep the exterior of the premises in repair, ut ante*, No. IV., clauses 8 and 9, p. 491 and 492.]

IN WITNESS, &c.

(*d*) It is important to insert a clause for determining the term in case of the bankruptcy or insolvency of the lessee, for those acts will not have the effect of avoiding the lease, nor will an assignment by the assignees operate as a breach of covenant not to assign without licence.

(*e*) If the property is leasehold, substitute—

“executors, administrators or assigns.”

No. VI.

LEASE FOR AN ABSOLUTE TERM OF NINETY-NINE YEARS.
VARIATION WHERE THE LEASE IS DETERMINABLE UPON
LIVES; ALSO WHERE THE LEASE CONTAINS A PROVISIO FOR
RENEWAL UPON THE DROPPING OF ANY OF THE LIVES.

1. Parties.
2. Testatum.
3. Habendum.
4. Reddendum.
5. Proviso for entry by lessor in case of nonpayment of rent or non-performance of covenants.

Additional Clauses.

- A. Clause where the term is to be determinable on lives.

B Term to cease in case lessee fails to show the existence of lives upon whose decease it is determinable.

C. Proviso for renewal upon the dropping of any of the lives within the ninety-nine years term.

D. Proviso that lessor shall not be compelled to grant more than three reversionary leases.

1. THIS INDENTURE, made the day of , A.D. 185 , Parties.
BETWEEN (*lessor*), of, &c., of the one part, and (*lessee*), of, &c.,
of the other part.

2. WITNESSETH, that in consideration of the rents and cove- Testatum.
nants hereinafter reserved and contained on the part of the said
(*lessee*), his executors, administrators and assigns, to be paid and
performed, the said (*lessor*) BOTH by these presents grant and
demise unto the said (*lessee*), ALL &c. [DESCRIBE *parcels*.]
AND all rights, members and appurtenances to the said premises
belonging or appertaining.

3. TO HAVE AND TO HOLD the said (*short general description*), Habendum.

No. VI.
*Lease for an
 absolute Term
 of Ninety-nine
 Years, &c.*

and all and singular other the premises hereinbefore described, and hereby demised with the appurtenances, unto the said (*lessee*), his executors, administrators and assigns, henceforth for the term of ninety-nine years. (*a*)

Reddendum.

4. YIELDING AND PAYING therefore yearly and every year during the said term, the yearly rent or sum of £ , clear of all rates, taxes, charges, imposts and outgoings whatsoever, on the 29th day of September, and the 25th day of March in every year, by equal half-yearly payments; the first half yearly payment to be made on the 29th day of September next. [INSERT covenant from lessee for payment of rent and taxes, ut ante, No. I., clauses 6 and 7, pp. 470 and 471.]

Proviso for
 entry by lessor
 in case of non-
 payment of rent
 or nonperform-
 ance of the
 covenants.

5. PROVIDED ALWAYS that in case the yearly rent or sum of £ shall be behind for the space of forty days next after any of the days hereinbefore appointed for payment thereof (being demanded), and no sufficient distress can be found in or upon the said demised premises, whereby the said rent may be levied, together with the costs of distraining for the same; or if the said (*lessee*), his executors, administrators or assigns, shall commit any wilful waste, spoil or destruction upon the said premises during the said term, (*b*) or shall not duly observe and perform the covenants,

(*a*) If the lease is to be determinable upon three lives, then add—

Clause where
 the term is
 to be deter-
 minable on
 lives.

A. "If A. B., now aged (*age*) years, or thereabouts, C. D. now aged (*age*) years, or thereabouts, and E. F., now aged (*age*) years, or thereabouts, or any or either of them shall so long happen to live."

(*b*) Or if any doubt shall arise touching the existence of any or either of the lives upon whose decease the said term is determinable—

Term to cease
 in case lessee
 fails to show
 the existence
 of lives upon
 whose decease
 it is determin-
 able.

B. "Or if any questions shall arise touching the existence of any of the lives upon whose decease this lease is determinable, and the said (*lessee*), his executors, administrators or assigns shall neglect or refuse to produce the person or persons concerning whom such questions shall arise, or to make due proof of his or

clauses, conditions, and agreements herein on his and their parts to be paid, observed and performed, THEN and thereupon, for all, any, or either of the causes aforesaid, it shall be lawful for the said (*lessor*), his heirs or assigns, into and upon the said hereby demised premises, or into any part thereof in the name of the whole to enter, and the same to have again, repossess and enjoy as in his or their original estate and right. (c)

No. VI.
 Lease for an
 absolute Term
 of Ninety nine
 Years, &c

their existence, on receiving six calendar months' notice in writing for that purpose from the said (*lessor*), his heirs or assigns."

(c) If a right of renewal on the dropping of any of the lives within the said term is to be conferred, add here the following proviso:—

C. "PROVIDED ALWAYS, and it is hereby further covenanted and agreed by and between the said parties to these presents, that upon the death of any or either of the lives above named on whose decease this lease is determinable, or any other life or lives that may be granted by any future lease or leases (not exceeding three) of the said demised premises, provided the same shall happen at any time within the term of ninety-nine years from the date hereof, and also provided the said (*lessee*), his executors, administrators or assigns, shall make application for that purpose in writing to the said (*lessor*), his heirs or assigns, or his or their steward or agent, within the space of six calendar months next after the death of each life so dying within the space of ninety-nine years as aforesaid, but not otherwise, he the said (*lessor*), his heirs or assigns, shall and will grant and execute a reversionary lease of the said hereby demised premises unto the said (*lessee*), his executors, administrators and assigns, for a further term of ninety-nine years, to be determinable on the death of such person as the said (*lessee*), his executors, administrators or assigns shall think proper to nominate, he or they paying therefore the sum of 30*l.* sterling, by way of fine for each such lease so to be granted for such additional life as aforesaid, and at and under such rent, covenants and conditions as are herein contained, except the covenant for the renewal of the estate and interest of the said (*lessee*), his executors, administrators or assigns of and in the said premises."

Proviso for
 renewal upon
 the dropping of
 any of the lives
 within the
 ninety-nine
 years term.

No. VI.

*Lease for an
absolute Term
of Ninety-nine
Years, &c.*

Proviso that
lessor shall not
be compelled to
grant more than
three lives on
any leases.

D. "PROVIDED NEVERTHELESS, that the said (*lessor*), his heirs or assigns, shall not, by virtue of anything herein contained, be compelled to grant more than three such reversionary leases for ninety-nine years, each determinable on one life to be nominated in each lease."

No. VII.

LEASE FOR THREE LIVES, AND FOR A TERM OF NINETY-NINE YEARS, WITH USUAL COVENANTS.^(a)

- | | |
|--------------|----------------------------------|
| 1. Parties. | 4. Reddendum. |
| 2. Testatum. | 5. To discharge rates and taxes. |
| 3. Habendum. | |

1. THIS INDENTURE, made the day of A.D. 18 , Parties.
 BETWEEN (*lessor*), of, &c., of the one part, and (*lessee*), of, &c.,
 of the other part.

2. WITNESSETH that, in consideration of the rents and cove- Testatum.
 nants hereinafter reserved and contained on the part of the said

(a) It seems to be a common practice in some parts of England, and also in the principality of Wales, to grant leases for lives, with remainder to the same parties for a term of years, as mentioned in the above precedent. One of the objects, in some of the mining districts, is, to give the lessees, who are chiefly workmen in the mines, votes for the county, who often therefore take leases of this kind, which confer a freehold estate during the existence of the lives, whilst the term, running at the same time, gives the lessees a certain and permanent interest; for the term of years, although a lesser estate, will not merge in the freehold, because the term is the more remote estate; for in order that a merger may take place, the reversionary estate must, in contemplation of law, be the larger one; hence, though an estate for years, however long in point of duration, will merge in a more remote estate for life, yet if an estate for life be limited to one, with remainder to him for years, or, if one who has an estate for life purchases a long term of years in the same property, the term will not become merged in the freehold, because, notwithstanding the estate for life is the larger one in legal contemplation, it is the preceding estate, and therefore both may well subsist together in the same person: (1 Hughes Pract. Sales, 407, 2nd edit.)

Practical
observations.

No. VII. *Lease for three Lives, and for a Term of Ninety-nine Years, with usual Covenants.* (lessee) to be observed and performed, the said (lessor) DOTH by these presents grant and demise unto the said (lessee) and his heirs, ALL, &c. [HERE DESCRIBE *parcels*], AND all rights, members and appurtenances to the said piece or parcel of land or ground belonging or appertaining.

Habendum. 3. TO HAVE AND TO HOLD the said piece or parcel of land or ground, and all and singular other the premises hereinbefore described, and hereby granted and demised, with the appurtenances, unto and to the use of the said (lessee), his heirs and assigns, for and during the term of the natural life and lives of the said (lessor), (*Christian name*), the wife of the said (lessor), and of the said (lessee), and of the survivors and survivor of them; and from and immediately after the decease of such survivor, TO THE USE of the said (lessee), his executors, administrators and assigns, from the 2nd day of February now last past, for and during and unto the full end and term of ninety-nine years.

Reddendum. 4. YIELDING AND PAYING therefore yearly and every year during the said terms hereby respectively granted unto the said (lessor), his heirs and assigns, the yearly rent or sum of 2*l.* 2*s.* sterling, clear of all rates, taxes and impositions whatsoever, to be paid by two equal half-yearly payments, on the 25th day of March and the 29th day of September, the first half-yearly payment to be made on the 25th day of March next. [INSERT *covenant by lessee for payment of rent, ut ante*, No. I., clause 6, p. 470.]

To discharge rates and taxes 5. AND ALSO shall and will pay and discharge all rates, taxes and impositions whatsoever, which now are, or hereafter may be assessed or imposed upon, or become payable for or in respect of the said demised premises [including also the land tax.](*b*)

(*b*) If the landlord is to pay the land tax, substitute for the words within brackets—

“excepting the land tax, which is to be paid by the said (lessor).”

It is expressly provided by stat. 5 & 6 Vict. c. 35, s. 63, that no contract or covenant between landlord and tenant is to be permitted to exonerate the former from the payment of the property tax.

[INSERT proviso for re-entry for nonpayment of rent or breach of covenant, as in last precedent, clause 5, p. 498 ; ALSO covenant from lessor for quiet enjoyment subject to the rents and covenants of the lease, *ut ante*, No. I., clause 10, p. 472.]

No. VII.
*Lease for three
Lives, and for
a Term
of Ninety-nine
Years, with
usual Covenants.*

IN WITNESS, &c.

No. VIII.

UNDERLEASE OF A MESSUAGE AND PREMISES FOR THE RESIDUE OF A TERM OF NINETY-NINE YEARS, TO COMMENCE FROM A DAY PASSED, SUBJECT TO THE RENTS AND COVENANTS CONTAINED IN THE ORIGINAL LEASE, WITH COVENANT FROM VENDOR THAT HE HAS DULY PAID THE RENTS AND PERFORMED THE COVENANTS RESERVED AND CONTAINED IN THE ORIGINAL LEASE. ALSO COVENANT FROM PURCHASER TO INDEMNIFY VENDOR FROM THE RENTS AND COVENANTS CONTAINED IN THE LEASE.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of original lease. 3. That vendor has erected a dwelling-house on demised premises, and contracted to sell the same. 4. Testatum. 5. Habendum for the term of ninety-nine years, from the 1st day of February, 18 . 6. Covenant from vendor that the rents and covenants in the original lease have been duly paid and performed. 7. That lease is a valid lease. | <ol style="list-style-type: none"> 8. That vendor has good right to demise. 9. For quiet enjoyment and freedom from incumbrances. 10. For further assurance. 11. To produce the original lease. 12. Covenant from purchaser to pay reserved rents and indemnify vendor against the covenants in the original lease. <p style="text-align: center;"><i>Additional Clauses.</i></p> <ol style="list-style-type: none"> A. Where the lease is determinable on lives. B. Recital of covenant for renewal. |
|--|--|

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*vendor*) of, &c., of the one part, and (*purchaser*), of, &c.,
of the other part.

Recital of
original lease.

2. WHEREAS by indenture dated on or about the 25th day of
March, in the year 18 , and made between (*owner of the fee*) of
the one part, and the said (*vendor*), of the other part, the piece or

parcel of ground hereinafter described was, with certain other lands, granted and demised by the said (*owner*, &c.) unto the said (*vendor*), To HOLD unto him, his executors, administrators and assigns from thenceforth for the term of ninety-nine years, (a) at the yearly rent of £ payable half-yearly as therein mentioned, and subject to the covenants, provisoes and agreements therein contained. (b)

No. VIII.

*Demise of a
Messuage and
Premises for the
Residue of a
Term of Ninety-
nine Years.*

3. AND WHEREAS the said (*vendor*) hath lately erected a messuage or dwelling-house on the said demised premises, and hath agreed to sell and demise the same, with the appurtenances, unto the said (*purchaser*) in manner hereinafter appearing, for the sum of . . .

That vendor has erected a dwelling-house on demised premises, and contracted to sell the same.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said hereinbefore recited agreement, and in consideration of the sum of sterling, paid by the said (*purchaser*) to the said (*vendor*), on the execution hereof, the receipt of which the said (*vendor*) hereby acknowledges, and therefrom doth by these presents acquit, release, exonerate, and for ever discharge the said

Testatum.

(a) If the lease is determinable on lives, add here—

A. "If (*names of lives*) or any or either of them should so long live,"

Where the lease is determinable on lives.

(b) If the original lease contains a proviso or covenant for renewal on the dropping of either of the lives, add here—

B. "AND the now reciting indenture also contains a covenant on the part of the said (*lessor*), to execute a new lease of the said premises on the dropping of any one of the said lives, at the same rents, and with the like covenants, provisoes, and conditions, as contained in the said hereinbefore recited indenture of lease, unto the said (*lessee*), his executors, administrators and assigns for a term of ninety-nine years, determinable on three lives, he or they paying for every new life so added, the sum of £ by way of fine; and also all arrears of rent then due in respect of the said premises."

Recital of covenant for renewal.

No. VIII.

*Demise of a
Messuage and
Premises for the
Residue of a
Term of Ninety-
nine Years.*

(*purchaser*), his heirs, executors, administrators and assigns; HE the said (*vendor*) DOTH by these presents grant and demise unto the said (*purchaser*), ALL [HERE DESCRIBE *parcels*.] Together with the messuage or dwelling-house erected thereon, and all and singular outhouses, buildings, yards, gardens, ways, paths, passages, waters, watercourses, sinks, gutters, sewers, drains, lights, easements, profits, privileges, commodities, advantages, rights, members and appurtenances whatsoever to the said premises belonging or appertaining.

Habendum for
the term of
ninety-nine
years, from the
1st day of
February 18 .

5. TO HAVE AND TO HOLD the said messuage or dwelling-house, piece or parcel of land or ground, and all and singular other the premises hereinbefore described, and hereby granted and demised, with the appurtenances, unto the said (*purchaser*) his executors, administrators and assigns, from the 1st day of February, in the year 18 (c) for the term of ninety-nine years, (d) subject to the said yearly rent of 2*l.* 2*s.*, payable to the said (*owner*, &c.), under the said hereinbefore recited indenture, and subject to the covenants therein contained, on the tenant or lessee's part to be observed and performed.

Covenant from
vendor that the
rents and cove-
nants in the
original lease
have been duly
paid and
performed.

6. AND the said (*vendor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*purchaser*), his executors, administrators and assigns, in manner following (that is to say), that the rents, covenants, conditions and agreements reserved and contained in the said hereinbefore recited indenture of lease have been duly paid and performed up to the day of the date of these presents.

(c) The present term is dated a day earlier than the term created in the original lease, so that it may expire a day earlier, and so leave a reversion in the present lessor.

(d) If the lease is determinable on lives, add here

“determinable as aforesaid.”

If the release is renewable, substitute—

“determinable and renewable as aforesaid.”

7. AND ALSO that notwithstanding any act, deed, matter or thing whatsoever done or permitted by the said (*vendor*) to the contrary, the said hereinbefore recited indenture of lease is at the time of the sealing and delivery of these presents a good, valid and subsisting lease in the law, and not forfeited, surrendered or become void or voidable.

No. VIII.

*Demise of a
Messuage and
Premises for the
Residue of a
Term of Ninety-
nine Years.*

That the lease
is a valid lease.

8. AND ALSO that notwithstanding any such act, deed, matter or thing as aforesaid, the said (*vendor*) now hath in himself good right, full power and lawful and absolute authority to demise and assure the said piece or parcel of ground, messuage or dwelling-house, and all and singular other the premises hereby demised, with their appurtenances, in manner aforesaid.

That vendor
has good right
to demise.

9. AND ALSO that it shall be lawful to and for the said (*pur-chaser*), his executors, administrators and assigns, from time to time and at all times during the continuance of the term hereby granted, peaceably and quietly to enter into and upon, have, hold, use, occupy, possess and enjoy the said piece or parcel of ground, messuage or dwelling-house and premises, and to receive and take the rents, issues and profits thereof, to and for his and their own use and benefit, without any lawful let, suit, eviction, ejection, interruption or denial whatsoever of or by him the said (*vendor*), or any person or persons whomsoever claiming or to claim by, from, through, under or in trust for him or them; and that freely, clearly and absolutely exonerated and indemnified by the said (*vendor*), his heirs, executors or administrators, and by him or them fully indemnified from all former and other estates, rights, titles, liens, charges and incumbrances whatsoever, either already or hereafter to be committed or permitted by the said (*vendor*), his executors, administrators or assigns, or any person or persons claiming or to claim by, from, through, under or in trust for him or them, save and except the rents, covenants, conditions and agreements in and by the said hereinbefore recited indenture of lease reserved and contained, and which on the tenant or lessee's part are or ought to be paid, observed and performed.

For quiet
enjoyment and
freedom from
incumbrances.

10. AND MOREOVER that the said (*vendor*), and all persons rightfully claiming or to claim any estate or interest in the said

For further
assurance.

No. VIII.

*Demise of a
Messuage and
Premises for the
Residue of a
Term of Ninety-
nine Years.*

piece or parcel of ground, messuage or dwelling-house and premises, by, from, through, under or in trust for him, shall and will from time to time and at all times during the continuance of the said term hereby granted, make, do, enter into, execute and perfect all such further assurances for the more perfectly or satisfactorily granting, demising, assuring and confirming the said piece or parcel of land or ground, messuage or dwelling-house, with the appurtenances unto the said (*purchaser*), his executors, administrators and assigns, for all the then residue of the said term hereby granted, as the said (*purchaser*), his executors, administrators and assigns, or his or their counsel in the law, shall require.

To produce
the original
lease.

11. AND ALSO that he the said (*vendor*), his executors, administrators or assigns, will at all times during the continuance of the said term hereby demised (unless prevented by fire or other inevitable accident) produce and shew forth unto the said (*purchaser*), his executors, administrators or assigns, or to his or their attorney, solicitor, agent or counsel, or before any court or courts of law or equity, or commission for the examination of witnesses, or otherwise as occasion shall require, the said hereinbefore recited indenture of lease of the day of in manifestation, defence and support of the title of the said (*purchaser*), his executors, administrators and assigns, to the said messuage or dwelling-house and premises hereby demised, or any part of the same; and at the like request and costs of the said (*purchaser*), his executors, administrators or assigns, furnish him and them with true and attested or other copies, extracts or abstracts, and permit the same to be examined and compared with the said original lease.

Covenant from
purchaser to
pay reserved
rents and
indemnify ven-
dor against the
covenants in the
original lease.

12. And the said (*purchaser*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*vendor*), his executors, administrators, and assigns, that he the said (*purchaser*), his executors and administrators, shall and will from time to time and at all times hereafter, during the continuance of the said term hereby granted, well and truly pay or cause to be paid unto the said (*owner of the fee*), his heirs or assigns, the yearly rent in and by the said indenture reserved, and which shall henceforth grow due

and payable in respect of the said piece or parcel of land or ground, messuages or dwelling-houses, at such time and in such manner as the same is thereby reserved. AND ALSO shall and will observe, perform, fulfil and keep all and singular the covenants, conditions and agreements in the said indenture of lease contained, and which on the lessee's part are required to be observed, performed, fulfilled and kept.

No. VIII.

*Demise of a
Messuage and
Premises for the
Residue of a
Term of Ninety-
nine Years.*

IN WITNESS, &c.

No. IX.

LEASE FOR TWENTY-ONE YEARS, BY MORTGAGOR AND
MORTGAGEE, CONTAINING COMMON COVENANTS.(a)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of deed creating mortgage. 3. Of agreement to let. 4. Testatum by which mortgagee demises and mortgagor confirms. 5. Habendum. 6. Reddendum. | <ol style="list-style-type: none"> 7. Proviso that mortgagor shall receive rents until mortgagee shall give notice to the contrary. 8. Declaration that mortgagor's receipts shall be sufficient discharges for rent. 9. Power for mortgagor to distrain for rent. 10. Covenant from mortgagee for quiet enjoyment by lessee, subject to payment of rent and performance of covenants. |
|--|--|

Parties.

1. THIS INDENTURE, made the day of A.D. ,
BETWEEN (*mortgagee*), of, &c., of the first part, (*mortgagor*), of,
&c., of the second part, and (*lessee*), of, &c., of the third part.

Recital of deed
creating mort-
gage.

2. WHEREAS by indenture dated on or about the day
of in the year , and made between the said (*mortgagor*)

Neither
mortgagor nor
mortgagee can
make a valid
lease unless
both concur.

(a) Neither a mortgagor nor a mortgagee are capable of making a binding lease without the other's concurrence. The mortgagor is legally incapacitated from doing so, because he has no legal estate in the lands; and a mortgagee is precluded in equity from so doing, as a power of this kind might enable the latter to debar the mortgagor of his benefit of redemption, by granting long leases upon fines, added to which a mortgagor, on paying off his mortgage, would have no legal remedy for the rent accrued due before the reconveyance to him, for until then, he is neither party to the lease nor to the estate, it being clearly established, that where a defendant has not obtained possession under a plaintiff, the latter can only recover rent from the time he has had the legal estate in him, although he has had the equitable estate long before: (*Cobb v. Carpenter*, 3 Camp. N. P. C. 13.)

of the one part, and the said (*mortgagee*) of the other part the said (*mortgagor*), for the considerations therein mentioned, conveyed and assured the messuage, tenement or farm, fields or closes of land and premises hereinafter described, and which are intended to be hereby demised (together with certain other hereditaments), unto and to the use of the said (*mortgagee*), his heirs and assigns, subject to a proviso for redemption on a certain day therein mentioned, and since past.

No. IX.
—
Lease for
Twenty-one
Years, by
Mortgagor and
Mortgagee,
containing
common
Covenants.
—

3. AND WHEREAS the said (*mortgagee*) and (*mortgagor*) have agreed to demise the said messuage, farm and premises unto the said (*lessee*), for the term of fourteen years, upon the conditions and in manner hereinafter appearing.

Of agreement
to let.

4. NOW THIS INDENTURE WITNESSETH, that in consideration of the rents and covenants hereinafter reserved and contained, on the part of the said (*lessee*), his executors, administrators and assigns, to be paid and performed, the said (*mortgagee*), DOTH by these presents demise, lease and to farm let, and the said (*mortgagor*) DOTH by these presents ratify and confirm unto the said (*lessee*), his executors, administrators and assigns, ALL [DESCRIBE *parcels*.] AND all ways, waters, watercourses, commons, easements, privileges, advantages, rights, members and appurtenances to the said messuage, tenement, farm and premises belonging or appertaining. [HERE INSERT *exceptions, if any.*]

Testatum by
which mort-
gagee demises
and mortgagor
confirms.

5. TO HAVE AND TO HOLD the said messuage, tenement or farm, fields or closes of land, and all and singular other the premises hereinbefore described, and hereby demised, with their appurtenances, unto the said (*lessee*), his executors, administrators and assigns, from the 25th day of March last past, for the term of fourteen years thence next ensuing.

Habendum.

6. YIELDING AND PAYING, therefore, yearly and every year during the said term, unto the said (*mortgagee*), his heirs and assigns, the yearly rent or sum of 220*l.* sterling, subject to such equity of redemption as the said premises are now liable to, and in case of the redemption of the said premises, then YIELDING

Reddendum.

No. IX.

*Lease for
Twenty-one
Years, by
Mortgagor and
Mortgagee,
containing
common
Covenants.*

AND PAYING, therefore, yearly and every year during the residue of the said term, unto the said (*mortgagor*), his heirs and assigns, the said yearly rent or sum of 220*l*.; AND ALSO subject to the proviso hereinafter contained with respect to the intermediate payment of such rent, until determined by notice in manner hereinafter mentioned; such yearly rent to be paid and payable free from all taxes (excepting the land tax and landlord's income and property tax), and all other deductions whatsoever by two equal half-yearly payments, on the 29th day of September, and the 25th day of March; the first half-yearly payment to be made on the 29th day of September next.

Proviso that mortgagor shall receive rents until mortgagee shall give notice to the contrary to the tenants.

7. PROVIDED ALWAYS, that in the meantime, and until the said (*mortgagee*), his heirs, executors, administrators or assigns, shall give notice in writing to the said (*lessee*), his executors, administrators or assigns, or leave the same at the dwelling-house on the said demised premises, requiring the said (*lessee*), his executors, administrators or assigns, to pay the said yearly rent of 220*l*. to the said (*mortgagee*), his heirs or assigns, such yearly rent shall be paid unto the said (*mortgagor*), his heirs or assigns.

Declaration that mortgagor's receipts shall be sufficient discharges for rent.

8. AND IT IS HEREBY DECLARED, that the receipt or receipts in writing of the said (*mortgagor*), his heirs or assigns, shall, until such notice shall be so given or left as aforesaid, be a valid discharge for so much of the said yearly rent as in such receipt or receipts shall be expressed to have been received.

Power for mortgagor to distrain for rent.

9. AND if, at any time previously to the giving or leaving of such notice as aforesaid, the said yearly rent of 220*l*., or any part thereof, shall be unpaid by the space of fourteen days next after either of the days hereinbefore appointed for payment thereof, THEN, and in such case, and so often as the same shall happen (although no formal demand shall have been made thereof), it shall be lawful for the said (*mortgagor*), his heirs and assigns, into and upon the said demised premises to enter, and then and there to distrain for the said yearly rent, or so much thereof as shall be then in arrear, and impound or dispose of the distress or distresses so taken, or otherwise to act therein according to due course of law; to the intent, that by the ways and means aforesaid, the said

(mortgagor), his heirs or assigns, shall and may be fully paid and satisfied the arrears of the said rents, and also all expenses incurred in respect of such distress or distresses.(b) [ADD HERE covenant from lessee for payment of rents, rates and taxes; to keep and leave premises in repair; with proviso for re-entry for non-payment of rent or breach of covenant, ut ante, No. I., clauses 6, 7, 8 and 13, pp. 469, 470.]

No. IX.
Lease for
Twenty-one
Years, by
Mortgagor and
Mortgagee,
containing
common
Covenants.

10. AND the said (mortgagee)(c) doth hereby for himself, his heirs, executors and administrators, covenant with the said (lessee), his executors, administrators and assigns, that the said (lessee), his executors, administrators and assigns, by and under the payment of the rents and performance of the covenants herein contained, on his and their parts to be paid, observed and performed, shall peaceably and quietly have, hold, use, occupy, possess and enjoy the said demised premises during the term hereby granted, without any lawful let, suit, eviction, ejection, interruption, molestation or denial, of or by the said (mortgagee), his heirs or assigns, or any other person or persons whomsoever rightfully claiming through, under, or in trust for him. [If the lease is to be made determinable before the regular expiration of the term, insert here, clause 7, ante, No. IV., p. 469.]

Covenant from
mortgagee for
quiet enjoyment
by lessee,
subject to
payment of rent
and performance
of covenants.

IN WITNESS, &c.

(b) As the legal estate is in the mortgagee, a power of distress is requisite to empower the mortgagor to distrain for the rent.

Practical
observations.

(c) In case both mortgagor and mortgagee concur in the lease as in the above precedent, the covenants for quiet enjoyment should be entered into by the mortgagee, because the latter has the legal estate; for if the mortgagor were made the covenanting party, the covenant would be a mere covenant in gross, and not running with the land, as it would have done if it had been entered into with the party having the legal estate: (*Nokes's case*, 8 Co. 80; *Webb v. Russell*, 3 T. R. 393; *Stokes v. Russell*, ib. 678; S. C., H. Black. 562; *Wailton v. Peacock*, 2 Bing. N. C. 411; *Doe v. Adam*, Cro. & Jerv. 232; *Line v. Stephenson*, 1 Bing. 671; 5 id. 183; *Smith v. Pocklington*, 6 Scott, 69; 1 Hughes Pract. Mort. 73.)

Covenants must
be entered into
between par-
ties having the
legal estate.

No. X.

LEASE OF COPYHOLD PREMISES WITH THE LICENCE OF
THE LORD.

- | | |
|---|---|
| 1. Parties.
2. Testatum.
3. Habendum and Reddendum.
4. Covenant from lessee to keep and leave premises in tenantable repair. | 5. Not to do any act to incur a forfeiture.
6. Covenant from lessor to indemnify lessee against customary rents, out-goings, &c. |
|---|---|

Parties

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*lessor*), of, &c., of the one part, and (*lessee*), of, &c., of
the other part.

Testatum.

2. WITNESSETH that in consideration of the rents and covenants hereinafter contained on the part of the said (*lessee*), his executors, administrators and assigns, to be paid and performed, the said (*lessor*), in pursuance of a licence granted to him by the lord of the manor of which the copyhold premises hereinafter described, and which are also intended to be hereby demised, are holden, dated the day of last (a memorandum whereof is duly enrolled on the court rolls of the said manor), DOTH by these presents demise and lease unto the said (*lessee*), ALL, &c. [DESCRIBE *parcels*], AND all rights, members and appurtenances to the said premises belonging or appertaining.

Habendum and
Reddendum.

3. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereinbefore described, and hereby demised, with their appurtenances, unto the said (*lessee*), his executors, administrators and assigns, from the 24th day of June last, for the full term of seven years. [INSERT *reddendum, ut ante*, No. I., clauses 4 and 5, p. 469.]

4. AND ALSO shall and will, from time to time during the said term, keep the said demised premises in good and tenantable repair; and at the expiration or sooner determination of the said term, peaceably and quietly surrender and yield up the same premises, with their appurtenances, in such good and tenantable repair as aforesaid, reasonable wear and tear, and accidents by fire, flood, storm or tempest only excepted.

No. X.

Lease of Copyhold Premises with the Licence of the Lord.

Covenant from lessee to keep and leave premises in tenantable repair.

5. AND FURTHER that the said (*lessee*), his executors, administrators or assigns, shall not do or permit any act, deed, matter or thing whatsoever, whereby, or by reason or means whereof, the estate and interest of the said (*lessor*) in the said copyhold tenement and premises, or any part thereof, can, shall or may be, or become, forfeited or void, or otherwise prejudicially affected. [INSERT HERE proviso for re-entry for nonpayment of rent or non-performance of covenants, *ut ante*, No. I., clause 12, p. 473; ALSO covenant from lessor for quiet enjoyment, *ut ib.*, clause 10, p. 472.]

Not to do any act to incur a forfeiture.

6. AND ALSO that the said (*lessor*), his executors, administrators or assigns, shall and will, from time to time and at all times hereafter, at his and their own costs, well and sufficiently protect, save harmless and keep indemnified the said (*lessee*), his executors, administrators and assigns, of, from and against all quit rents, copyhold and customary outgoing, heriots, duties, suits and services to be paid, rendered, or performed to the lord or lords, lady or ladies, for the time being of the said manor, for or in respect of the said copyhold tenement and premises, or any part thereof, and also of and from all such costs, charges and expenses as the said (*lessee*), his executors, administrators or assigns shall expend, disburse or be put unto, for or by reason of the nonpayment, nonobservance and nonperformance of such quit rents, customary outgoing, heriots, duties, suits and services respectively, or any or either of them, or in anywise in relation thereto.

Covenant from lessor to indemnify lessee against customary rents, outgoing, &c.

IN WITNESS, &c.

No. XI.

LEASE OF COPYHOLD PREMISES FOR ONE YEAR, AND THENCE-
FORTH FROM YEAR TO YEAR, FOR THE TERM OF SEVEN
YEARS, WITHOUT THE LICENCE OF THE LORD.

1. Parties.

2. Testatum.

3. Habendum.

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*lessor*) of, &c., of the one part, and (*lessee*) of, &c., of
the other part.

Testatum.

2. WITNESSETH, that in consideration of the rents hereinafter
reserved, and the covenants and conditions hereinafter contained,
on the part of the said (*lessee*), his executors, administrators and
assigns, to be observed and performed, HE the said (*lessor*) DOTH
by these presents demise and lease unto the said (*lessee*), ALL, &c.
[HERE DESCRIBE *parcels*.] And all rights, members and appur-
tenances to the said tenements and premises belonging or apper-
taining, or usually held, occupied or enjoyed therewith.

Habendum.

3. TO HAVE AND TO HOLD the said (*short general description*),
and all and singular other the premises hereinbefore described and
hereby demised (being copyhold), with the appurtenances, unto
the said (*lessee*), his executors, administrators and assigns, from
henceforth for the term of one year now next ensuing, and (if the
custom, or the lord or lady for the time being of the manor whereof
the said copyhold premises are holden, will allow or grant a licence
for the same to be so demised, and so that the said premises shall

not become forfeited or liable to be forfeited, but not otherwise) thenceforth from year to year, for and during and unto the full end and term of seven years.(a) [INSERT *reddendum*; covenant from lessee for payment of rent and taxes, and to keep and leave premises in tenantable repair, clauses 6, 7 and 8, pp. 470, 471; ALSO covenant by lessor for quiet enjoyment,(b) and proviso for avoiding term for nonpayment of rent or breach of covenant, *ut ib.*, clauses 10 and 12, pp. 472, 473.]

No. XI.

Lease of Copyhold Premises for One Year, and thenceforth from Year to Year, for the Term of Seven Years, without the Licence of the Lord.

IN WITNESS, &c.

(a) This clause is framed with a view to prevent a forfeiture. For although a lease for a year, and so from year to year, for a certain period, standing alone, would work a forfeiture, where the custom of the manor did not authorize the granting of leases for a longer period than a year; yet, if it is provided that this shall only be if the lord shall so license and consent, the demise will only be treated as conferring a demise for one year certain, and no more, as the obtaining the lord's licence will be considered to constitute a condition precedent to the grant of the further term: (*Luffkin v. Mann*, 1 N. R. 163, 221; 1 Smith, 90; 4 East, 221; and see practical observations, *ante*, p. 456, note (a). Practical remarks.

(b) That a covenant for quiet enjoyment will not create a forfeiture, see *ante*, p. 456, note (a).

No. XII.

LEASE BY HUSBAND AND WIFE OF LANDS OF WHICH THE HUSBAND AND WIFE ARE SEISED IN HER RIGHT, IN PURSUANCE OF STATUTE 32 HEN. 8, c. 28. (a) VARIATION WHERE SUCH LEASE IS MADE BY TENANT IN TAIL IN PURSUANCE OF THE SAME STATUTE. (b)

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital that husband, and wife in her right, are seised of premises. 3. Testatum. 4. Habendum. 5. Reddendum. | <ol style="list-style-type: none"> 6. Covenants for payment of rent, &c. 7. Proviso of re-entry for non-payment of rent, or non-performance of covenants. <hr style="width: 50%; margin: 10px auto;"/> <p style="text-align: center;"><i>Substituted Clause.</i></p> <p>A. Recital that tenant in tail has agreed to demise.</p> |
|---|--|

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*husband*), of, &c., and (*Christian name*) his wife, of the
one part, and (*lessee*) of, &c., of the other part.

Husbands,
seised in right
of their wives,
how empowered
to grant leases.

(a) By statute 32 Hen. 8, c. 28, ss. 1, 3, husbands seised in right of their wives, whether in fee, or in tail, or jointly with their wives, of any estate of inheritance made before marriage, are empowered to grant leases, provided that the wife be made a party to every such lease, that such be made by indenture, that she seal the same, and that the rent reserved be to the husband and wife, and the heirs of the wife, according to her inheritance. This proviso, it must however be observed, only comprehends those cases where the wife is solely seised of the inheritance; consequently, where the husband and wife are jointly seised, she need not be made a party: (Butl. Co. Litt. 44, a. n.) The statute, it must also be remembered, extends only to leases, and therefore an agreement for a lease will not be enforced, even against the wife if she survive her husband, or against her heirs at whatever time she may happen to die: (Cow. 267; Anon. 2 Freem. 224.)

As to leases by
tenants in tail.

(b) By the same statute (32 Hen. 8, c. 28), tenants in tail are also empowered to grant leases for the term of three lives or twenty-one years, which will be binding on the issue in tail, but not upon those in remainder or reversion. In order, however, to render such leases valid, the terms of the statute must be strictly complied with. These require that the lease shall be made by indenture;

2. WHEREAS the said (*husband*), and (*Christian name*), his wife, are seised in her right of the messuage, farm, and fields or closes of land and premises hereinafter described, and have agreed to demise the same to the said (*lessee*), for the term and subject to the rents, covenants and conditions hereinafter contained. (c)

No. XII.
—
*Lease by
Husband and
Wife of Lands
of which
Husband is
seised in
right of Wife.*

3. NOW THIS INDENTURE WITNESSETH, that in consideration of the rents and covenants hereinafter reserved and contained on the part of the said (*lessee*), his executors, administrators and assigns, to be paid and performed, (d) [THEY the said (*husband*) and (*Christian name*), his wife, DO] by these presents demise, lease and to farm let unto the said (*lessee*), his executors, adminis-

Recital that
husband, and
wife in her
right, are seised
of premises.
Testatum.

that it shall begin presently, and not in *futuro*; and that it must be either for three lives or twenty-one years, but not for both; yet it may be for a shorter period than either the three lives or the twenty-one years, and would therefore be good if made for two lives, or even for one; or for fifteen, ten, or any lesser number of years prescribed by the statute: (*Harris v. Zouch*, 1 Keb. 347; *Briers v. Boulton*, 3 ib. 745; *Zouch d. Woolston v. Woolston*, 2 Bur. 1140; *Isherwood v. Olknow*, 3 Mau. & Selw. 382.)

With respect to what will be considered the usual or customary rent, Lord Holt says that it means the rent which was reserved when the power was created, if a lease were then in being, or that which was last reserved if no lease was in being: (3 Cha. Rep. 645.) Lord Cowper, however, suggested that if lands were leased once at a greater, and twice at a lesser, rent, he should consider the rent of the former lease to be the ancient rent; for the last might be by the person who had the fee, who would not be bound to observe the ancient rent, but might let it for nothing if he pleased. He also said that this rule could not apply to land anciently demised where fines had been taken; for there the rents were more or less in proportion as the fines were higher or lower: (4 Com. Dig. 192.) The rent also which is reserved must be the rent of the property of which the lessor is so seised in tail, and not of that, or any other kind of property: for if a tenant in tail reserve an entire rent upon a farm in which some fee simple tenements are mixed with the entailed lands, the lease will not be a valid one within the statute: (*Rees d. Parkin v. Philip*, Wightw. 69.)

What will be
considered the
usual customary
rent.

(c) If the lease is by tenant in tail, substitute for the above clause—

A. "AND WHEREAS the said (*tenant in tail*) is seised to him and the heirs [*or heirs male, as the case may be,*] of his body of the messuage, farm and fields, and fields or closes of land hereinafter described, and hath agreed to demise the same to the said (*lessee*), for the term, and subject to the covenants and conditions, hereinafter contained."

Variation, where
the lease is by
tenant in tail.

(d) If the lease is by tenant in tail, substitute for words within brackets—

"HE the said (*tenant in tail*), DOTH."

No. XII.

*Lease by
Husband and
Wife of Lands
of which
Husband is
seised in
right of Wife.*

Habendum.

trators or assigns, ALL [DESCRIBE *parcels*]; AND all rights, members and appurtenances to the said premises belonging or appertaining.

4. TO HAVE AND TO HOLD the said messuage, farm, fields or closes of land, and all and singular other the premises hereby demised, with their appurtenances, unto the said (*lessee*), his executors, administrators and assigns, henceforth for and during the term of twenty-one years.

Reddendum.

5. YIELDING AND PAYING, therefore, yearly and every year during the said term, unto (e) the said (*husband*) and (*Christian name*), his wife, and to the heirs of the said (*Christian name*), the wife of the said (*husband*),] the yearly rent or sum of 185*l.* sterling, without any deduction (excepting the land tax and landlord's property tax), by two equal half-yearly payments, on the 29th day of September and the 25th day of March in every year, the first half-yearly payment to be made on the 29th day of September next.

Covenant from
lessee for
payment of
rent.

6. AND the said (*lessee*) doth hereby for himself, his heirs, executors and administrators, covenant with the said [(*husband*) and (*Christian name*), his wife, and the heirs of the said (*Christian name*), the wife of the said (*husband*), (f)] that he the said (*lessee*), his executors, administrators or assigns, shall and will, from time to time during the said term, duly pay unto the said (*husband*) and (*Christian name*), his wife, and to the heirs of the said (*Christian name*), the wife of the said (*husband*), the said yearly rent by equal half-yearly payments, at the respective times hereinbefore ap-

(e) If the reservation be to the tenant in tail, for the words within brackets substitute—

“the said (*tenant in tail*) and the heirs (*or heirs male, as the case may be,*) of his body.”

(f) If the covenant be with the tenant in tail, substitute—

“the said (*tenant in tail*) and the heirs [*or heirs male, as the case may be,*] of his body.”

pointed for payment thereof. [ADD covenant for payment of rates and taxes, and all other usual covenants, *ut ante*, No. I., clauses 6, 7 and 8, pp. 470, 471.]

No. XII.

*Lease by
Husband and
Wife of Lands
of which
Husband is
seised in
right of Wife.*

7. PROVIDED ALWAYS, that in case the said yearly rent of 185*l.*, or any part thereof, shall be behind and unpaid for the space of twenty-one days next after any of the days hereinbefore appointed for payment thereof (being demanded) and no sufficient distress shall be found upon the said demised premises; or if the said (*lessee*), his executors, administrators or assigns, shall permit or suffer any act or thing whatsoever which shall be prejudicial to the title or estate or inheritance of the said [(*husband*) and (*Christian name*), his wife, or of the heirs of the said (*Christian name*), the wife of the said (*husband*), (*g*)] or shall commit any wilful waste, spoil or destruction on the said premises, or shall not duly observe the covenants, clauses, conditions and agreements herein on his and their parts to be paid, observed and performed; THEN and in such case, and from thenceforth, for all, any or either of the causes aforesaid, it shall be lawful for the said [(*husband*) and (*Christian name*) his wife, or either of them, or the heirs of the said (*Christian name*) the wife of the said (*husband*)(*h*)] entitled for the time being to the reversion immediately expectant on the determination of the said term, into and upon the said hereby demised premises, or into and upon any part thereof in the name of the whole, to enter, and the same to have again, repossess and enjoy, as in his or their original estate or right; anything hereinbefore contained to the contrary thereof in any wise notwithstanding.

*Proviso of
re-entry for
nonpayment of
rent or breach
of covenant.*

IN WITNESS, &c.

(*g*) In case of tenant in tail,—

“(tenant in tail) and the heirs [or heirs male, *as the case may be*,] of his body ”

(*h*) In the case of tenant in tail,—

“(tenant in tail) and the heirs [or the heirs male, *as the case may be*)] of his body ”

No. XIII.

LEASE BY A TENANT FOR LIFE IN PURSUANCE OF A POWER
CONTAINED IN A MARRIAGE SETTLEMENT.

1. Parties.

2. Testatum.

3. Habendum.

4. Reddendum.

4 folios, 28 words.

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*tenant for life*), of, &c., of the one part, and (*lessee*), of
&c., of the other part.

Testatum.

2. WITNESSETH, that in consideration of the rents and cove-
nants hereinafter reserved and contained, on the part of the said
(*lessee*) to be paid and performed, HE the said (*tenant for life*), in
exercise and execution of the power reserved to him by a certain
indenture dated on or about the day of (being the settle-
ment made previously to and in contemplation of the marriage of
the said (*tenant for life*) with his present wife), and of every other
power enabling him in this behalf, BOTH by this present deed
appoint, and also demise, lease, set and to farm let unto the said
(*lessee*), his executors, administrators and assigns. [DESCRIBE
parcels, AND INSERT *general words*, and *exceptions*, if any.]

Habendum.

3. TO HAVE AND TO HOLD the said (*short general description*),
and all and singular other the premises hereby demised, with their
appurtenances, unto the said (*lessee*), his executors, administrators
and assigns, from the 25th day of March last, for and during and
unto the full end and term of twenty-one years from thenceforth
next ensuing, and fully to be completed and ended.

4. YIELDING AND PAYING therefore yearly and every year during the said term, unto the said (*tenant for life*) and his assigns during his life, and after his decease to the person or persons for the time being entitled to the said premises in reversion immediately expectant on the determination of the said term, the yearly rent or sum of £ sterling, clear of all burthens, rates, taxes, charges, imposts and outgoings whatsoever, on the 29th day of September and the 25th day of March in every year, by equal half-yearly payments, the first half-yearly payment to be made on the 29th day of September next. [ADD usual covenants, with proviso for re-entry, for non-payment of rent or breach of covenants, *ut ante*, No. I., clauses 6, 7, 8, 10, 11 and 13, pp. 470—473.]

No. XIII.

*Lease by a
Tenant for Life,
in pursuance
of a Power
contained in a
Marriage
Settlement.*

Reddendum.

IN WITNESS, &c.

No. XIV.

LEASE GRANTED BY A TENANT FOR LIFE AND THE REVERSIONER.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital that lessee for life is entitled to an estate for life, with remainder in reversion. 3. Of agreement to demise. 4. Testatum. 5. Covenant by lessee for payment of rent, &c. 6. Covenant from lessor for quiet enjoyment by lessee subject to rents and covenants. | <ol style="list-style-type: none"> 7. To keep exterior of dwelling-house and outbuildings in repair. 8. Proviso for determining term. <p style="text-align: center;"><i>Substituted Clauses.</i></p> <ol style="list-style-type: none"> A. Recital of conveyance to tenant for life, for his own life, and those of two other persons. B. That the other two persons are dead. C. That reversioner is entitled to the reversion expectant on tenant for life's estate. |
|---|---|

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*lessee for life*), of, &c., of the first part, and (*reversioner*),
of, &c., of the second part, and (*lessee of term*), of, &c., of the
third part.

Recital that
lessee for life is
entitled to an
estate for life,
with remainder
to reversioner.

2. WHEREAS the said (*lessee for life*) is entitled to the messuage
or tenement, farm, lands and premises hereinafter described, for the
term of his natural life, the immediate reversion expectant thereon
being vested in the said (*reversioner*), his heirs and assigns.(a)

Recital of
conveyance to
tenant for life
for his own life
and those of two
other persons.

(a) If lessee for life takes for his own life and that of other persons, insert
here clauses A., B., C., *infra*.

A. WHEREAS by indenture of lease and release bearing date
respectively on or about the and days of , in the

3. AND WHEREAS the said (*lessee for life*) hath agreed to demise, and the said (*reversioner*) to confirm the said messuage or tenement, farm, lands and premises unto the said (*lessee of term*) for the term of seven years, to commence from the 25th day of March next, at the rents, and under and subject to the covenants, stipulations and agreements hereinafter contained.

No. XIV
Lease granted
by a Tenant
for Life, and
the Reversioner.
Of agreement
to demise.

4. NOW THIS INDENTURE WITNESSETH, that in consideration of the rents and covenants hereinafter reserved and contained on the part of the said (*lessee of term*) to be paid and performed, the said (*lessee for life*) DOTH by these presents demise, lease, set and to farm let, and the said (*reversioner*) DOTH by these presents ratify and confirm unto the said (*lessee of term*), his executors, administrators and assigns, ALL [DESCRIBE *parcels*], and all rights, members, privileges and appurtenances to the said premises belonging. [INSERT *habendum and reddendum, ut ante*, No. I, clauses 4 and 5, p. 469.]

year 18 , the indenture of release being made between (*grantor*) of the one part, and the said (*lessee for life*), of the other part, the said (*grantor*) for the considerations therein mentioned, granted and released unto the said (*lessee for life*), his heirs and assigns, the messuage or tenement, farm, lands and premises hereinafter described, and which are intended to be hereby demised, TO HOLD the same, with the appurtenances, unto and to the use of the said (*lessee for life*), his heirs and assigns, during the term of his natural life, and also during the term of the natural lives of *A. B.* and *C. B.* in the now reciting indenture described, and of the survivors and survivor of them.

B. AND WHEREAS the said *A. B.* and *C. B.*, or both of them, are dead, so that the said (*lessee for life*) is the only surviving life upon the said premises.

That the two
other persons
are dead.

C. AND WHEREAS the said (*reversioner*) is entitled to the reversion in the said premises immediately expectant on the determination of the estate of the said (*tenant for life*) therein.

That reversioner
is entitled in
reversion.

No. XIV.

*Lease granted
by a Tenant
for Life, and
the Reversioner.*

Covenant by
lessee for
payment of
rent.

5. AND the said (*lessee of term*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*lessee for life*), his executors, administrators and assigns, and also with the said (*reversioner*), his heirs and assigns, that he the said (*lessee of term*), his heirs, executors or administrators, will, during the said term, pay unto the said (*lessee for life*) and his assigns during his life, and in case of his decease during the continuance of the said term, pay unto the said (*reversioner*), his heirs or assigns, the said hereinbefore reserved rent of 70*l.*, by equal quarterly payments, at the respective times hereinbefore appointed for payment thereof. [INSERT *covenants from lessee to pay rates and taxes, to keep and leave interior of premises in repair, ut ante*, No. I., clauses 7 and 8, pp. 469 to 471.]

Covenant from
lessors for quiet
enjoyment by
lessee, subject
to rents and
covenants.

6. AND each of them the said (*lessee for life*) and (*reversioner*) do hereby for themselves and their respective heirs, executors and administrators, severally covenant with the said (*lessee of term*), his executors, administrators and assigns, that under payment of the rent hereby reserved, and subject to the performance of the covenants, stipulations and agreements hereinbefore contained on the part of the tenant or lessee to be paid, observed and performed, the said (*lessee of term*), his executors, administrators and assigns, shall and may peaceably and quietly have, hold, use, occupy, possess and enjoy the said messuage or tenement, farm, lands, and all and singular other the premises hereby demised, with their appurtenances, during the said term hereby granted, without let, suit, eviction, interruption or disturbance of or by the said (*lessee for life*) or (*reversioner*) respectively, or any other person or persons whomsoever rightfully claiming under or in trust for them respectively.

To keep
exterior of
dwelling-house
and out-
buildings in
repair.

7. AND ALSO, that the said (*lessee for life*), during the continuance of his estate and interest in the said demised premises, and after the determination thereof, that the said (*reversioner*), his heirs or assigns, shall and will from time to time, and at all times during the continuance of the said term, keep the exterior walls and slated roofs of the said dwelling-house and outbuildings belonging to the said demised premises in proper and sufficient repair.

8. PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties hereto, that if the said yearly rent of 70*l.* shall be unpaid for the space of twenty-one days next after any or either of the days hereinbefore appointed for payment thereof (being demanded), or if breach shall happen to be made in all, any, or either of the covenants hereinbefore contained, on the part of the said (*lessee*), his executors, administrators or assigns, to be performed, then for all, any, or either of the causes aforesaid, it shall be lawful for the person or persons for the time being entitled to the immediate reversion expectant on the said term hereby granted, into and upon all and singular the said demised premises to enter, and the same, with the appurtenances, to hold and enjoy, in the same manner as if these presents had never been made and executed.

No. XIV.

*Lease granted
by a Tenant
for Life, and
the Reversioner.*

*Provision for
determining
term.*

IN WITNESS, &c.

No. XV.

LEASE OF A FARM FOR A TERM OF TWENTY-ONE YEARS, CONTAINING SPECIAL COVENANTS AND EXCEPTIONS. ALSO, VARIATIONS ADAPTED TO VARIOUS CIRCUMSTANCES.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum. 3. Exception of mines and minerals, with right of entry to work the same. 4. Of timber trees, with right of entry to cut down and carry away. 5. Of right of sporting. 6. To view the condition of the farm. 7. Habendum. 8. Reddendum. 9. To keep and leave premises in repair. 10. That tenant will not cut down, destroy, nor injure timber; nor keep unwrung swine on the premises. 11. Not to cut the hedges except at the proper seasons. 12. To level molehills and cut rushes. 13. Not to mow meadow lands more than once a year. 14. To stack all hay and corn on the premises. 15. To consume all manure on the premises. 16. That landlord shall have right of entry for the purpose of viewing the premises. 17. Landlord to have right of entry on certain portions of demised premises in last year of said term, for the purpose of preparing the wheat crop. | <ol style="list-style-type: none"> 18. Liberty for landlord to sow grass seeds in the last year of the said term. 19. Landlord to supply tenant with rough wood for the purposes of repairs. 20. Tenant to occupy one moiety of the barns until the 24th of June after the expiration of the term. <p style="text-align: center;">—</p> <p style="text-align: center;"><i>Additional and Substituted Clauses.</i></p> <ol style="list-style-type: none"> A. Grant of a particular right of water-course. B. Grant of a particular right of way. C. Exception for a passage of water. D. Additional rent to be paid for ploughing up old meadow ground. E. Covenant to pay additional rent for ploughing up old meadow ground. F. Covenant from tenant not to assign or underlet without licence. G. Exception where the tenant is to have the right of lopping pollards. H. Tenant to keep orchards properly planted. I. To plant bank with quicksets. K. To consume all hay on the premises. L. Clause stipulating that landlord is to have the benefit of all unconsumed manure, gratis. |
|---|--|

M. Landlord to pay the value of all unconsumed hay left on the premises.

N. Landlord to give notice to persons sporting on premises in tenant's name.

O. Also to bring actions against trespassers in tenant's name.

P. Proviso for determining term at the option of either landlord or tenant at the end of the first seven or fourteen years.

1. THIS INDENTURE, made the day of A.D. 18 , Parties.
BETWEEN (*landlord*) of, &c., of the one part, and (*tenant*) of, &c., of
the other part.

2. WITNESSETH, that in consideration of the rents, covenants, Testatum.
conditions and agreements hereinafter reserved and contained on
the part of the said (*tenant*), his executors, administrators or
assigns, to be paid, observed and performed, the said (*landlord*)
DOETH by these presents demise, lease, set and to farm let unto
the said (*tenant*), his executors, administrators and assigns, ALL,
(DESCRIBE *parcels*](*a*), and all ways, (*b*) commons, easements,
emoluments, privileges, rights, members and appurtenances to the
said premises belonging or appertaining.

3. EXCEPTING and always reserving out of this present demise Exception of
all mines of copper, tin, lead and of all other minerals and metals, mines and minerals, with

(*a*) If a particular right of watercourse is to be granted, insert—

A. "AND ALSO full and free liberty, use and enjoyment of all Grant of a particular right of watercourse.
the water flowing down a certain brook, called —, in the parish
of —, for all and every useful purpose at all times during the
said term hereby granted."

(*b*) If a particular right of way is to be conferred, insert a clause to the
following effect:—

B. "AND particularly a right of way, either on foot or on horse- Grant of a particular right of way.
back, or with carts or carriages, in, over, upon and throughout all
those fields or closes of land called the leading from to as
the same road or way hath been used by the tenants or occupiers
of the said demised premises, for the more convenient enjoyment
thereof."

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*Lease
of a Farm for
Twenty-one
Years,
with Special
Covenants, &c.*

right of entry
to work the
same.

and also of all quarries or pits of stone, slate, gravel and marle, will full and free liberty of ingress, egress and regress for the said (*landlord*), his heirs or assigns, and for his or their steward or stewards, agent or agents, servants and workmen, to dig, mine and search for tin, fin ore, copper, copper ore, lead, lead ore and all other metals and minerals in, under or throughout all or any part of the said demised premises, and the ores, metals and minerals there found to raise and bring to grass, and there to stamp, spall, pick, dress, cleanse and make merchantable, and the stone, marle and slate to draw, lay, break, hew, saw and carry away, in, by and through any part of the said demised premises at his and their respective wills and pleasures.

Of timber trees,
with right of
entry to cut
down and
carry away.

4. AND ALSO excepting all timber and timber-like trees, pollards and timber plants, both seedlings and saplings (except fruit trees, now growing, or hereafter to grow on the said demised premises), with full liberty of ingress, egress and regress for the said (*landlord*), his heirs or assigns, in, through, over and upon the said demised premises, for the purpose of felling, cutting down, grubbing up, and carrying away the said trees, bark, roots and branches thereof, with or without servants, workmen, horses and carriages, and also with all other necessary implements, doing as little injury as possible to grass, crops and other property of the said (*tenant*), his executors, administrators or assigns, there growing or being upon the said demised premises: the said (*landlord*), his heirs or assigns, making compensation to the said (*tenant*), his executors, administrators or assigns, for all damage or injury so done; and in case any dispute shall arise as to the amount of such damage or injury, the same shall be determined by the award of two arbitrators, or their umpire, in the usual manner. (c)

(c) If a reservation of a passage of water is to be reserved, insert here—

Exception for a
passage of
water.

C. "AND ALSO excepting unto the said (*landlord*), his heirs and assigns, and the tenants, lessees and occupiers for the time being of the said (*landlord*) of any other lands or tenements holden of or belonging to the said (*landlord*), free passage of water and soil flowing or coming to or from any lands or tenements of the said

5. AND ALSO EXCEPTING unto the said (*landlord*), his heirs and assigns, and his or their stewards, servants or agents, and all persons by his and their permission, either in his or their company or not, the right of sporting, either by hunting, coursing, fishing, or fowling, in, through, over and upon all the said demised premises, and every or any part of the same.

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Lease
of a Farm for
Twenty-one
Years,
with Special
Covenants, &c.
 Of right of
 sporting.

6. AND ALSO EXCEPTING unto the said (*landlord*), his heirs or assigns, either with or without a surveyor, workmen or others, a right of entry twice in every year, at all seasonable hours in the daytime, into and upon the said demised premises, or any part thereof, for the purpose of viewing the repairs, and the state of the cultivation of the said demised premises.

Of right of
 entry to view
 the condition
 of the farm.

7. TO HAVE AND TO HOLD the said farm, &c. (*short general description*), and all and singular other the premises hereby demised, with their appurtenances (except as before excepted), unto the said (*tenant*), his executors, administrators or assigns, henceforth for the full term of twenty-one years, to be computed from the 25th day of March last. (*d*)

Habendum.

8. YIELDING AND PAYING therefore yearly and every year during the said term hereby demised, the yearly rent or sum of 300*l.* sterling, without deduction, by equal quarterly payments; on the 24th day of June, the 29th day of September, the 25th

Reddendum.

(*landlord*), through any channels, watercourses, drains or sewers now or hereafter to be made in, through or under the said demised premises; such tenants, lessees or occupiers for the time being on reasonable request, paying and contributing their respective portions of the expenses of cleansing and repairing the said channels, watercourses, drains or sewers, as often as occasion shall require the same."

(*d*) If the lease is to be determinable by landlord or tenant before the time of its appointed determination, add here—

"determinable nevertheless as hereinafter mentioned."

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 ———
*Lease
 of a Farm for
 Twenty-one
 Years,
 with Special
 Covenants, &c.*
 ———

day of December, and the 25th day of March; the first payment thereof to be made on the 24th day of June next. (e) AND ALSO YIELDING AND PAYING a proportional part of the said rent for the period (if any) which may happen to elapse between any one of the said quarterly days of payment, and the period of the determination of the said term, if the same should happen to determine under the proviso for that purpose hereinafter contained; such proportionate part of the said rent to be paid immediately on such

(e) If an additional rent is to be paid for converting pasture into arable land, add here—

Additional rent
 to be paid for
 ploughing up
 old meadow
 ground.

D. "AND ALSO YIELDING AND PAYING yearly and every year during the said term hereby demised, in addition to the said yearly rent of 300*l.* hereinbefore reserved, the additional rent or sum of 10*l.* sterling for every acre of meadow or pasture land hereby demised, that is set out and described as meadow, and coloured green in the map or plan delineated in the margin, of these presents,* which the said (*tenant*), his executors, administrators or assigns shall plough up and convert into tillage, and so in proportion for any less quantity than an acre, and thus to continue thenceforth for all the then residue of the said term hereby demised; such additional rent to be paid on the several days and times as the original rent hereby reserved in respect of the said premises; the first payment of such additional rent to be made on the first of the aforesaid days of payment of rent, which shall next happen after such breach or conversion as aforesaid shall have been made."

Practical
 observations.

* It is often important to have a map or plan of the estate, showing what part is to be considered as meadow, and what as arable, set out either in the margin, or indorsed upon the lease, in order to prevent the possibility of any misconstruction upon the subject; for although a tenant, even in the absence of any stipulation to that effect, would be liable for waste for ploughing up and converting meadow or wood into arable land, not only on the ground of varying the course of husbandry, but also because it changes the identity of the property (*Dy. 37, a*; *Co. Litt. 53, b*); still, this will not preclude him from showing that the land, although described as meadow, was actually arable, or *vice versa* (*Skipworth v. Green*, 1 Str. 610; and see *Birch v. Stevenson*, 3 Taunt. 469); but if, as in the above form, it be expressly stated what is to be considered as meadow and what as arable, it will settle that question beyond all possibility of doubt.

determination. (f) [INSERT covenant for payment of rent and taxes, *ut ante*, No. I., clauses 6 and 7, pp. 470, 471.](g)

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*Lease
of a Farm for
Twenty-one
Years,
with Special
Covenants, &c.*

To keep and
leave premises
in repair.

9. AND ALSO, that the said (*tenant*), his executors, administrators or assigns, will at all times during the said term, and at his and their own costs, keep the dwelling-house and all erections and buildings on the said demised premises, in good and tenantable repair, accident by fire, flood or tempest only excepted; and will repair, maintain and uphold all gates, post, rails, fences, palings, mounds and embankments, and trim the hedges, and cleanse and scour the ditches, drains and watercourses on the said demised premises, whenever the same shall become necessary, and shall in all respects till, cultivate and manage the said premises in a proper and husbandlike manner; and the said messuage or tenement, erections and buildings, with the fixtures and appurtenances as aforesaid, in all things well and sufficiently repaired, maintained, upheld, tilled and cultivated, in such good tenantable repair and condition as aforesaid, will, on the expiration or sooner determination of the said term, yield up unto the said (*landlord*), his heirs or assigns. (h)

(f) This clause may often prove a useful one; for in the absence of a stipulation of this kind, if the lessor enters for breach of covenant before next day of payment, he loses the intermediate rent; and if he accepts the rent before it becomes due, he waives the forfeiture; nor has the recent statute 4 & 5 Will. 4, c. 22, relating to the apportionment of rents, made any alteration in the law in this respect. Practical remarks.

(g) If additional rent is to be paid for converting meadow into arable land, add—

E. "AND ALSO the said additional rent of 10*l.* for every acre of meadow or pasture land, which the said (*lessee*), his executors, administrators, or assigns shall convert into tillage, and so in proportion for any less quantity than an acre, as hereinbefore mentioned (if the same shall become payable) on the several days or times hereinbefore appointed for the payment of the same." Covenant to pay additional rent for ploughing up old meadow ground.

(h) If the lessee is not to assign without licence, add here—

F. "AND ALSO that the said (*tenant*), his executors, adminis- Covenant from

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*Lease
of a Farm for
Twenty-one
Years,
with Special
Covenants, &c.*

That tenant will
not cut down,
destroy, nor
injure timber.
nor keep un-
wring swine on
the premises.

10. AND ALSO, that the said (*tenant*), his executors, administrators or assigns, will not hew, fell, lop, top, shroud, destroy, damage or injure any timber or timber-like trees (*i*) [or pollards] now or hereafter to be growing on the said demised premises, or fix any rails or palings thereto, and will also keep and preserve all such trees, and also all timber plants, both seedlings and saplings, from spoil by cattle and other injury; AND ALSO shall not nor will keep any swine unwring on the said demised premises. (*k*)

tenant not to
assign or
underlet
without licence.

trators or assigns, will not at any time during the said term assign, demise, or underlet, or part with the possession of, the said demised premises or any part thereof, or permit the same to be taken in execution on any process, or deposit these presents as a security with any person or persons whomsoever, without the previous licence in writing of the said (*landlord*), his heirs or assigns for that purpose.”*

* See observations upon this covenant, *ante*, p. 447, *et seq.*

(*i*) If the tenant is to have a right of lopping pollards of a certain growth, for words within brackets, substitute—

Exception,
where tenant
is to have the
right of lopping
pollards.

G. “Excepting pollards which have been usually shrouded or lopped within twelve years next preceding the commencement of the said term.”

(*k*) If there are any orchards on the premises, insert the following clause here:—

Tenant to keep
orchards pro-
perly planted.

H. “AND ALSO that the said (*tenant*), his executors, administrators and assigns, will from time to time during the said term maintain and keep all the orchards upon the said demised premises well planted with good, healthy and thriving apple trees, taking care from time to time to remove the old and decayed trees, and to plant sound and healthy young trees in their place; and shall and will effectually fence out and preserve the same from injury by cattle, and will not suffer any kind of cattle to depasture therein that may be liable to injure the trees in such orchards.”

11. AND ALSO shall not nor will cut any of the hedges or thorns on the said demised premises, except in regular rotation at seasonable and proper times, and in a husbandry-like manner, and thereupon properly plash and lay the same, and repair, scour and cleanse the banks and ditches thereof. (*l*)

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—
*Lease
of a Farm for
Twenty-one
Years,
with Special
Covenants, &c.*

12. AND ALSO shall and will, yearly and every year during the said term, cut open and spread all the mole-hills and ant-hills, and destroy the moles and ants; and cut and mow all rushes and weeds growing on the meadow or pasture lands of the said demised premises, at such times and seasons as will best tend to prevent their future increase.

Nor cut the
hedges except
at the proper
season.
To level mole-
hills and cut
rushes.

13. AND ALSO shall not mow any part of the meadow lands of the said farm more than once in the year, nor later than the day of July in any year of the said term, but shall feed such lands with sheep and other cattle, according to the best approved rules of good husbandry.

Not to mow
meadow lands
more than once
a year.

14. AND ALSO will, yearly and every year, during the said term stack and deposit all the corn, hay, straw, stubble, chaff, fodder and haum which shall arise or be produced from the said farm upon some part of the said demised premises. (*m*)

To stack all
hay and corn on
the premises.

15. AND ALSO shall and will spend and consume all the dung, muck, compost and manure arising from the said hay, straw,

To consume all
manure on the
premises.

(*l*) If any of the fences consist of quickset hedges, it will be proper to add here—

I. "AND ALSO from time to time during the said term plant with good quicksets all parts of the said banks where the hedge may have become impaired and require such planting."

To plant banks
of hedges with
quicksets.

(*m*) If all the hay is to be consumed on the premises, add—

K. "AND shall not sell or dispose of any hay arising upon the said farm, but shall consume the whole on the said demised premises."

To consume
all hay on the
premises.

No. XV. stubble, chaff, fodder or haum on the said demised premises, and
 Lease lay out and spread the same at all seasonable times, and in a
 of a Farm for proper and husbandry-like manner, wherever it may be most
 Twenty-one required, (n) [the said landlord, his heirs or assigns, paying or
 Years, with Special allowing unto the said (*tenant*), his executors, administrators or
 Covenants, &c. assigns, the value of all such dung, muck, compost and manure
 arising from the said premises, which during the last year of the
 said term shall remain thereon good and unspread; (o) and in
 case any dispute shall arise respecting the value, the same shall be
 determined by the award of two arbitrators or their umpire in the
 usual manner.]

That landlord
 shall have right
 of entry for the
 purpose of
 viewing the
 premises.

16. AND ALSO that it shall be lawful for the said (*landlord*), his
 heirs or assigns, or his or their steward or bailiff, twice in every
 year during the said term, at all seasonable hours in the daytime,
 either with or without a surveyor, workmen, or others, to enter
 upon all or any part of the said demised premises, for the purpose
 of examining the condition thereof; and if such premises shall be
 found out of repair, or any mismanagement in husbandry shall
 appear in any of the lands thereof, the said (*tenant*), his executors,
 administrators or assigns, will immediately, upon notice thereof

(n) If the landlord is to have the benefit of the unconsumed manure without
 paying for it, substitute for the words above within brackets—

Clause
 stipulating that
 landlord is to
 have the benefit
 of all uncon-
 sumed manure
 gratis.

L. "Except the last year of the said term, when the same shall
 be left in the yards of the said premises for the use of the said
 (*landlord*), his heirs or assigns, or his or their incoming tenant,
 who from and after the day of in the last year of the said
 term, shall have full liberty of ingress, egress and regress, with or
 without servants, horses, carriages, and all other necessary imple-
 ments for the purpose of carrying out the same on any part of the
 arable lands, whereon the incoming landlord or tenant shall then
 have a right of entry as hereinafter mentioned."

(o) If all the hay is to be consumed on the premises, add—

Landlord to pay
 the value of
 unconsumed
 hay left upon
 the premises.

M. "AND ALSO all such hay gathered in such last year from the
 said premises, as shall remain sound and unconsumed thereon."

in writing given to him or them by the said (*landlord*), his heirs or assigns, cause all such repairs to be made, and such mismanagement corrected, discontinued, altered and remedied, according to the covenants hereinbefore contained. (*p*)

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of a Farm for
Twenty-one
Years,
with Special
Covenants, &c.*

17. AND ALSO that the said (*landlord*), his heirs or assigns, or the succeeding tenant or tenants of the said premises, shall be at liberty, at any time after the 24th day of June in the last year of the said term, to enter upon such part of the said demised premises, not exceeding acres, as shall be in course for wheat in the succeeding year, in order to prepare the lands for the wheat crop, allowing to the said (*tenant*), his executors, administrators, or assigns, a reasonable compensation for the same.

*Landlord to
have right of
entry on certain
portions of
demised
premises in last
year of said
term, for the
purpose of
preparing the
wheat crop.*

(*p*) Where the landlord retains the right of sporting, the two following clauses may be found useful :

N. "AND ALSO that it shall be lawful for the said (*landlord*), his heirs or assigns, or his or their attorney or agent, from time to time, and at all times during the said term, in the name of the said (*tenant*), his executors, administrators or assigns, to give notice to any person or persons who shall hunt, fish, fowl, or sport upon the said demised premises, or any part thereof, to forbear coming on the same premises, and that the said (*tenant*), his executors, administrators or assigns, will, at the request of the said (*landlord*), his executors, administrators or assigns, or his or their agent or attorney, sign and cause such notice to be delivered to such person or persons as aforesaid."

*Landlord
authorized to
give notice to
persons sporting
on premises in
tenant's name.*

O. "AND ALSO that it shall be lawful for the said (*landlord*) his heirs or assigns, to bring any action or actions against such person or persons in the name of the said (*tenant*), his executors, administrators or assigns; and that the said (*tenant*), his executors, administrators or assigns, will not release nor disavow such action or actions, or otherwise discharge the same, without the previous consent in writing of the said (*landlord*), his heirs or assigns, he the said (*landlord*), his heirs or assigns, defraying all the costs of such proceedings, and indemnifying the said (*tenant*), his executors, administrators or assigns therefrom."

*Also to bring
actions against
trespassers in
tenant's name.*

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*Lease
of a Farm for
Twenty-one
Years,
with Special
Covenants, &c.*

Liberty for
landlord to sow
grass seeds in
the last year of
the term.

18. AND ALSO that the said (*tenant*), his executors, administrators or assigns, will permit the said (*landlord*), his heirs or assigns, in the last year of the said term, to sow grass seeds with the summer corn to be sown on the said premises, and shall harrow in the same gratis, and shall also give him or them, or his or their incoming tenant, four days' previous notice of the time of sowing such summer corn. [INSERT *covenant from landlord for quiet enjoyment, ut ante*, No. I., clause 10, p. 472.]

Landlord to
supply tenant
with rough
wood for the
purpose of
repairs.

19. AND ALSO that the said (*landlord*), his heirs or assigns, shall and will from time to time during the said term, as often as occasion shall be or require, at the request in writing of the said (*tenant*), his executors, administrators or assigns, supply and provide him and them with a sufficient quantity of good rough timber, either upon the said demised premises, or within the distance of three miles thereof, for the purpose of keeping the said premises in repair, and maintaining and upholding the gates, rails, posts, fences and palings belonging thereto.

Tenant to
occupy one
moiety of the
barns until the
24th June
after the
expiration of
the term.

20. AND ALSO that it shall be lawful for the said (*tenant*), his executors, administrators and assigns, to occupy one moiety of the barns and of all other necessary outbuildings on the said premises, until the 24th day of June next after the expiration or sooner determination of the said term, for the purpose of thrashing out his or their corn or grain, and spending and foddering out the straw, stubble and fodder, in and upon the said demised premises. [INSERT *proviso for re-entry for non-payment of rent or breach of covenant, ut ante*, No. I., clause 12, p. 473.]

IN WITNESS, &c.

(r) If landlord or tenant is to be empowered to determine the term at the end of the first seven or fourteen years, add—

Proviso for
determining the
term at the
option of either
landlord or
tenant at the

P. "PROVIDED ALWAYS, and it is hereby declared and agreed, that it shall be lawful for the said (*landlord*), his heirs or assigns, or for the said (*tenant*), his executors, administrators or assigns, to determine the said term hereby demised, at the end of the first

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*Lease
of a Farm for
Twenty-one
Years,
with Special
Covenants, &c.*

seven, or fourteen years thereof, upon giving to the other of them, his executors, administrators or assigns, or his heirs or assigns, as the case may be, six calendar months previous notice in writing, or leaving the same at his or their last or usual place of abode in England, and in such case the said term hereby demised, these presents, and every clause, matter and thing herein contained, shall immediately upon the expiration of the said notice, cease, determine and be void to all intents and purposes whatsoever, anything hereinbefore contained to the contrary thereof in anywise notwithstanding."

*end of the first
seven or fourteen
years.*

No. XVI.

SHORT FORM OF A LEASE OF A FARM. VARIATION, WHERE THE RENT IS MADE TO VARY ACCORDING TO THE AVERAGE PRICE OF CORN FOR A GIVEN NUMBER OF YEARS. ALSO, WHERE CORN IS RENDERED IN KIND IN LIEU OF A MONEY RENT.

1. Parties.
2. Testatum.
3. Exception of mines, quarries and timber.
4. To keep and leave demised premises in proper repair and condition.
5. To keep tillage land in due course of husbandry, and to consume all manure on the premises.
6. That lessor shall have right of

entry to view the repairs, and that tenant will repair upon notice.

Substituted Clauses.

- A. Reddendum of a money rent varying according to the average price of corn.
- B. Reservation of a corn rent payable in kind.
- C. Covenant that lessee will not remove fixtures erected by him, which, on the expiration of the term, are to become the absolute property of the lessor.

Parties.

1. THIS INDENTURE, made the twenty-ninth day of September, A.D. 18 , BETWEEN (*lessor*) of, &c., of the one part, and (*lessee*) of, &c., of the other part.

Testatum.

2. WITNESSETH, that in consideration of the rents and covenants to be paid and performed by the said (*lessee*) as hereinafter mentioned, the said (*lessor*) DOETH by these presents demise, lease, and to farm let unto the said (*lessee*) ALL (DESCRIBE *parcels*), with the appurtenances thereunto belonging.

3. EXCEPTING unto the said (*lessee*), his heirs or assigns, all mines and quarries, timber and timber-like trees, with right of entry for him and them, and his or their servants and workmen, for the purpose of working the said mines and quarries, and for cutting down and carrying away the said timber and timber-like trees, and to do all such necessary acts as may be deemed requisite for effectually working the said mines, carrying off the produce thereof, and also for cutting down and carrying off the said timber and timber-like trees; the said (*lessor*), his heirs or assigns, making due compensation for all surface damage thereby done, which, in case of dispute, shall be determined by the award of two referees or their umpire, in the usual manner; and also with like right of entry for the said (*lessor*), his heirs or assigns, twice in every year, to view the condition of the repairs of the said premises. [INSERT *habendum*, as in last precedent, clause 7, p. 531. ALSO *reddendum*, *ut ib.*, clause 8, p. 531, 532.(a) ALSO *covenant by lessee for payment of rent and taxes, rates, &c.*, *ut ante*, No. I., clauses 6, 7, pp. 470, 471.]

No. XVI.

Short Form
of a Lease of a
Farm with
Variation, &c.

Exception of
mines, quarries,
and timber.

(c) If a corn rent is to be reserved, insert one of the following clauses:—

A. "YIELDING AND PAYING, therefore, yearly and every year during the said term unto the said (*lessor*), his heirs or assigns, for the first four years of the said term, the yearly rent or sum of £ sterling, the average price of bushels of British wheat, calculated according to the corn returns for the city of London, for the four years immediately preceding the day of the date hereof; and for the next four years of the said term, such yearly rent or sum of money as shall be equal to the value of the like number of bushels of British wheat, to be calculated as aforesaid, for the four years immediately preceding the twenty-ninth day of September, 1855; and for the last four years of the said term such yearly rent or sum of money as shall be equal to the value of the like number of bushels of British wheat to be calculated as aforesaid, for the four years immediately preceding the twenty-ninth day of September, ; such average value to be ascertained at the costs of the said (*lessor*), his heirs or assigns, and such rents to be payable by four equal quarterly payments, on the twenty-fifth day of December, the twenty-fifth day of March, the

Reddendum of
a money rent
varying
according to
the average
price of corn.

No. XVI. 4. AND ALSO shall, during the said term keep, and at the expiration or sooner determination of the same term leave, the glass of the windows, and all internal repairs of the dwelling-house, and also all gates, stiles, rails and palings, in good and proper repair, accidents by fire, flood or tempest only excepted; and also amend and repair all hedges, embankments, walls and other fences, and cleanse and scour all ditches, drains and watercourses, in or upon the said premises, whenever the same shall become necessary. (b)

Short Form of a Lease of a Farm, with Variation, &c.

Covenant from tenant to keep and leave demised premises in proper condition.

twenty-fourth day of June, and the twenty-ninth day of September in every year during the said term; the first quarterly payment to be made on the twenty-fifth day of December next."

Another form where the rent is to be paid in corn :

Reservation of a corn rent payable in kind. B. "YIELDING AND PAYING, therefore, yearly and every year during the said term unto the said (*lessor*), his heirs or assigns, the yearly rent of bushels of sound and merchantable wheat, by four equal quarterly payments, on the twenty-fifth day of December, the twenty-fifth day of March, the twenty-fourth day of June, and the twenty-ninth day of September in every year, without any deduction on abatement or any account on pretence whatsoever; the first quarterly payment to be made on the twenty-fifth day of December next."

Practical observations.

(b) As the recent act, 14 & 15 Vict. c. 25, empowers the tenant to remove buildings and fixtures erected by him on a farm, unless the landlord elects to take them at a valuation, it will be necessary to insert a special clause or covenant whenever it is intended that such fixtures are to become the absolute property of the landlord without his making any compensation for them. The following clause will, it seems, be adapted for the purpose :

Covenant that lessee will not remove fixtures erected by him and which, on the expiration of the term, are to become the absolute property of the lessor.

C. "AND ALSO shall, during the said term keep, and at the expiration or sooner determination of the said term leave, all buildings and fixtures erected by the said (*lessee*), his executors, administrators or assigns, upon the said farm, in such good and proper repair as aforesaid, and all such buildings and fixtures shall become the absolute property of the said (*lessor*), his heirs and assigns, without any compensation being made by him or them to the said (*lessee*), his executors, administrators or assigns, in respect of the same, any rule of law or equity or statutory enactment to the contrary thereof in anywise notwithstanding."

5. AND ALSO shall and will keep the tillage land of the said premises in due course of husbandry, and shall not nor will dispose of any manure which shall arise upon the said farm, but shall consume the whole of such manure on the said demised premises, and shall not mow any meadow lands of the same premises more than once in any one year; and in all respects shall manage the said farm in a proper and husbandry like manner,^(c) according to the best system of husbandry, and to the custom of the surrounding country.

No. XVI.

*Short Form
of a Lease of a
Farm, with
Variation, &c.*

*To keep tillage
land in due
course of
husbandry, and
to consume all
manure on the
premises.*

6. AND ALSO that it shall be lawful for the said (*lessor*), his heirs or assigns, or his or their steward or bailiff, twice in every year during the said term, at all reasonable hours in the day time, either with or without a surveyor, workmen or others, to enter upon all or any part of the said demised premises for the purpose of viewing the repairs and the state of cultivation of the said premises; and if such premises shall be found out of repair, or any mismanagement shall appear in the cultivation thereof, the said (*lessee*), his executors, administrators or assigns, will, immediately upon receiving notice thereof in writing from the said (*lessor*), his heirs or assigns, cause such repairs to be made, and such mismanagement corrected and discontinued accordingly. [INSERT covenant from lessor for quiet enjoyment and for keeping exterior of premises in repair; AND ALSO PROVISIO for determining term for non-payment of rent or breach of covenant, *ut ante*, No. I., clauses 10, 11 and 13.]

*That lessor
shall have right
of entry to view
the repairs and
that tenant will
repair upon
notice.*

IN WITNESS, &c.

(c) If the tenant is not to assign without licence, insert here clause, note (h), to last precedent, *ante*, p. 533.

No. XVII.

SHORT FORM OF LEASE OF A FARM. VARIATION, WHERE THE RENT IS MADE TO FLUCTUATE ACCORDING TO THE AVERAGE PRICE OF CORN FOR A GIVEN NUMBER OF YEARS. ALSO, WHERE CORN IS RENDERED IN KIND IN LIEU OF A MONEY RENT. ALSO, WHERE THE LESSEE IS NOT TO REMOVE FIXTURES.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum. 3. Exception of mines, quarries, and timber, and of right of entry to view the condition of the repairs. 4. Habendum. 5. Reddendum. 6. Covenant from lessee for payment of rent. 7. Also to pay rates and taxes. 8. To keep and leave demised premises in proper repair. 9. To keep tillage in due course of husbandry, and to consume all manure on the premises. 10. Not to assign or underlet without licence. 11. That lessor shall have a right of entry to view the repairs, and that tenant will repair upon notice. | <ol style="list-style-type: none"> 12. Covenant from lessor for quiet enjoyment by lessee. 13. That lessor will keep exterior of premises in repair. 14. Proviso for avoiding the term for non-payment of rent or breach of covenant. 15. Proviso for determining term at the option of landlord or tenant. |
|--|---|

Substituted Clauses.

- A. Render of a money rent varying according to the average price of corn.
- B. Reservation of a corn rent payable in kind.
- C. Covenant by lessee not to remove fixtures erected by him, and which on the expiration of the term are to become the property of the lessor.

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*lessor*) of, &c., of the one part, and (*lessee*) of, &c., of
the other part.

2. WITNESSETH, that in consideration of the rents and cove-
nants to be paid and performed by the said (*lessee*), as hereinafter
mentioned, the said (*lessor*), DOTH, by these presents demise,
lease, and to farm let unto the said (*lessee*), ALL, &c. (DESCRIBE
parcels), with the appurtenances thereunto belonging.

No. XVII.
*Short Form
of a Lease of a
Farm, with
Variations, &c.*
Testatum.

3. EXCEPTING unto the said (*lessor*), his heirs and assigns, all
mines and quarries, and also all timber and timber-like trees, with
right of entry for him and them, and his or their servants and
workmen, for the purpose of effectually working the said mines
and quarries, and for cutting down and carrying away the said
timber and timber-like trees, and to do all such necessary acts as
may be deemed requisite for any or either of the above-mentioned
purposes, the said (*lessor*), his heirs or assigns making due com-
pensation to the said (*lessee*), his executors, administrators and
assigns, for all surface damage thereby done, which, in case of
dispute shall be determined by the award of two referees or their
umpire in the usual manner; and also with a like right of entry
for the said (*lessor*), his heirs and assigns, twice in every year, at
seasonable hours in the day time, to view the condition of the
repairs of the said premises.

Exception of
mines,
quarries, and
timber, and of
right of entry
to view the
condition of
the repairs.

4. TO HAVE AND TO HOLD the said (*short general description*),
with the appurtenances, except as hereinbefore is excepted, unto
the said (*lessee*), his executors, administrators and assigns, from the
29th day of September last, for the term of years; but
determinable nevertheless as hereinafter mentioned.

Habendum.

5. YIELDING AND PAYING therefore yearly and every year
during the said term, the annual rent or sum of £ , payable
by four equal quarterly payments, on the 25th day of December,
the 25th day of March, the 24th day of June, and the 29th day of
September in every year, the first quarterly payment to be
made on the 25th day of December next.(a)

Reddendum.

(a) If a corn rent is to be reserved, substitute one of the following clauses for
the above:—

A. "YIELDING AND PAYING therefore yearly and every year
VOL. I. 2 N

Reddendum of

No. XVII.

*Short Form
of a Lease of a
Farm, with
Variations, &c.*

Covenant from
lessee for
payment of
rent.

6. AND the said (*lessee*), doth hereby for himself, his heirs, executors and administrators, covenant with the said (*lessor*), his heirs and assigns, that he the said (*lessee*), his executors, administrators or assigns, will, during the said term, pay unto the said (*lessor*), his heirs or assigns, the yearly rent hereby reserved, on the several days hereinbefore appointed for payment thereof.

money rent
varying accord-
ing to the aver-
age price of
corn.

during the said term, unto the said (*lessor*), his heirs or assigns, for the first seven years of the said term, the yearly rent or sum of £ sterling, the average price of bushels of British wheat, calculated according to the corn returns of the city of London, for the seven years immediately preceding the day of the date hereof; and for the next seven years of the said term, such yearly rent or sum of money as shall be equal to the value of the like number of bushels of British wheat to be calculated as aforesaid, for the four years immediately preceding the 29th day of September, 18 : and for the last seven years of the said term, such yearly rent or sum of money as shall be equal to the value of the same quantity of British wheat to be calculated as aforesaid, for the seven years immediately preceding the 29th day of September, 18 ; such average value to be ascertained at the costs of the said (*lessor*), his heirs or assigns, and such rents to be payable by four equal quarterly payments, on the 25th day of September, the 25th day of March, the 24th day of June, and the 29th day of September, in every year during the said term; the first quarterly payment to be made on the 25th day of December next."

Or,

Reservation of a
corn rent pay-
able in kind.

B. "YIELDING AND PAYING therefore yearly and every year during the said term unto the said (*lessor*), his heirs or assigns, the yearly rents of two hundred bushels of sound and merchantable wheat by four equal quarterly payments, on the 25th day of December, the 25th day of March, the 24th day of June, and the 29th day of September in every year, without deduction on any account or pretence whatsoever; the first quarterly payment to be made on the 25th day of December next."

7. AND ALSO, shall and will during the said term, pay all rates and taxes charged or assessed upon the said demised premises, excepting the landlord's income and property tax.

No. XVII.

*Short Form
of a Lease of a
Farm, with
Variations, &c.*

8. AND ALSO shall and will during the said term keep, and at the expiration of or sooner determination of the said term leave, the glass of the windows, and all internal repairs of the dwelling-house, and also all gates, stiles, rails and palings in proper repair; accidents by fire, flood, storm or tempest only excepted; and also amend and repair all walls, hedges, embankments and other fences; and cleanse and scour all ditches, drains, and watercourses in or upon the said demised premises, whenever the same shall become necessary.(b)

Also to pay
rates and taxes.

To keep and
leave demised
premises in
proper repair.

9. AND ALSO shall and will keep the tillage land of the said premises in due course of husbandry, and shall not nor will dispose of any manure which shall arise upon the said farm, but will consume the whole of such manure on the said demised premises; and shall not mow any meadow lands of the same premises more

To keep tillage
in due course
of husbandry,
and to consume
all manure on
the premises.

(b) As the recent enactment, 14 & 15 Vict. c. 25, empowers a tenant to remove fixtures and buildings erected by him on the demised premises, unless the lessor elects to take them at a valuation, it will now be necessary, whenever it is intended that the buildings and fixtures erected or affixed by the tenant are to become the absolute property of the landlord without the latter making any compensation for them, to insert a special clause or covenant to that effect, as in the following clause:—

Practical
remarks.

C. "AND ALSO shall and will, during the said term keep, and at the expiration or sooner determination of the said term leave, all buildings and fixtures erected or affixed by the said (*lessee*), his executors, administrators and assigns, upon the said farm and premises hereby demised, in such good and proper repair as aforesaid; and all such buildings and fixtures shall become the absolute property of the said (*lessor*), his heirs and assigns, without any kind of compensation whatever being made by him or them to the said (*lessee*), his executors, administrators or assigns, in respect of the same, any rule of law or equity or statutory enactment to the contrary thereof in anywise notwithstanding."

Covenant that
lessee will not
remove fixtures
erected by him,
which on the
expiration of
the term are to
become the
absolute
property of
the landlord.

No. XVII. than once in any one year; and in all respects shall manage the said farm in proper and husbandry-like manner.

*Short Form
of a Lease of a
Farm, with
Variations, &c.*

Not to assign
or underlet
without licence.

10. AND ALSO shall not nor will assign or underlet the said demised premises or any part thereof without the previous consent in writing of the said (*lessor*), his heirs or assigns.

That lessor
shall have a
right of entry
to view the
repairs, and
that tenant will
repair upon
notice.

11. AND ALSO that it shall be lawful for the said (*lessor*), his heirs or assigns, twice in every year during the said term, at all reasonable hours in the daytime, and either with or without surveyors, workmen and other persons, to view the condition of the repairs and the state of cultivation of the same premises; and in case any part of the said premises shall be found to be out of repair, or if any mismanagement shall appear in the cultivation thereof, THEN the said (*lessee*), his executors, administrators or assigns, will immediately upon receiving notice in writing from the said (*lessor*), his heirs or assigns, of such want of reparation or mismanagement of cultivation, cause such repairs to be made, and such mismanagement to be rectified accordingly.

Covenant from
lessor for quiet
enjoyment by
lessee.

12. AND the said (*lessor*), doth hereby for himself, his heirs, executors and administrators, covenant with the said (*lessee*), his executors, administrators and assigns, that he the said (*lessee*), his executors, administrators and assigns, under payment of the rent, and performance of the covenants as herein contained, on his and their parts to be paid and performed, shall peaceably hold and enjoy the said demised premises for the said term hereby granted, without eviction or disturbance by the said (*lessor*), his heirs or assigns, or any person or persons rightfully claiming under or in trust for him or them.

That lessor will
keep exterior of
premises in
repair.

13. AND ALSO that the said (*lessor*), his heirs or assigns, shall and will from time to time, and at all times during the said term hereby granted, keep in repair the roofs, walls, beams, and stanchions of the said dwelling-house on the said premises, and also of the barns and all other out-houses and buildings thereunto belonging.

14. PROVIDED ALWAYS, that if the yearly rent hereby reserved shall be unpaid for the space of twenty-one days next after any of the days hereinbefore appointed for payment thereof (being demanded), or if breach shall happen to be made in all, any, or either of the covenants herein contained, on the part of the said (lessee), his executors, administrators or assigns, to be performed, THEN, for all, any, or either of the causes aforesaid, it shall be lawful for the said (lessor), his heirs or assigns, to re-enter upon the said demised premises, and repossess the same in his or their original estate.

No XVII.

*Short Form
of a Lease of a
Farm, with
Variations, &c.*

*Proviso for
avoiding the
term for non-
payment of rent
or breach of
covenant.*

15. PROVIDED ALSO, that it shall be lawful for the said (lessor), his heirs or assigns, or for the said (lessee), his executors, administrators or assigns, to determine the said term hereby granted at the expiration of the first or years thereof, upon giving to the other of them, his executors, administrators or assigns, or heirs or assigns, as the case may be, six calendar months previous notice in writing to that effect (such notice to expire on the 29th day of September), or leave the same at his or their last or usual place of abode or business in England.

*Proviso for
determining
term at the
option of land-
lord or tenant.*

IN WITNESS, &c.

No. XVIII.

LEASE BY A DEAN AND CHAPTER OF A CATHEDRAL IN CON-
SIDERATION OF THE SURRENDER OF A FORMER LEASE.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum. 3. Habendum. 4. Reddendum. 5. Covenant by lessee for payment of rent, taxes, &c. 6. That lessee will make two perfect terriers and deliver the same to the Dean and Chapter. | <ol style="list-style-type: none"> 7. Proviso for avoiding lease for non-payment of rent or breach of covenant. 8. Testimonium. <p style="text-align: center;"><i>Additional and Substituted Clauses.</i></p> <p>A. Persons claiming under lessee to surrender lease for the purpose of obtaining a renewal within the space of one year after coming into possession.</p> |
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Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN the Dean and Chapter of the Cathedral of in ,
of the one part, and (*lessee*), of &c., of the other part.

Testatum.

2. WITNESSETH, that in consideration of a surrender of a former lease, dated the day of by which the premises intended to be again demised was before granted by the said Dean and Chapter to the said (*lessee*), for the term of years, and in consideration of the rents and covenants on the part of the said (*lessee*), his executors, administrations and assigns, to be paid and performed, the said Dean and Chapter, with their common consent and assent, Do by these presents, for themselves and successors, grant, demise, and to farm let unto the said (*lessee*), ALL, &c. [DESCRIBE *parcels*,] ALL which said premises hereinbefore described are the

same premises as were comprised in the said lease formerly granted by the said Dean and Chapter to the said (*lessee*), as aforesaid; AND all rights, members and appurtenances to the said premises belonging or appertaining.

No. XVIII.

Lease by Dean
and Chapter,
&c.

3. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereinbefore described with their appurtenances, unto the said (*lessee*), his executors, administrations and assigns, from the Feast of St. Michael the Archangel last past, until the full end and term of eighteen years next ensuing, and fully to be complete and ended.

Habendum.

4. YIELDING AND PAYING therefore, yearly and every year during the said term, unto the said Dean and Chapter and their successors, at or in the treasury house of the said church, the sum of 20*l.* of lawful money current in Great Britian, at the Feasts of the Annunciation of the Blessed Virgin Mary, and of St. Michael, the Archangel, by equal half-yearly portions, to be paid without any demand, clear of all manner of taxes and all impositions whatsoever, to be imposed upon or payable for or in respect of the said demised premises.

Reddendum.

5. AND the said (*lessee*) doth hereby for himself, his executors, administrators and assigns, covenant with the said Dean and Chapter, and their successors, [INSERT covenant for payment of rent and taxes, *ut ante*, No. I., clauses 6 and 7, pp. 470, 471. ALSO to keep and leave premises in proper repair, *ut ante*, No. XVI., clauses 4 and 5, pp. 542, 543.]

Covenant by
lessee for pay-
ment of rent,
taxes, &c.

6. AND ALSO that the said (*lessee*), his executors, administrators or assigns will, make two perfect terriers, wherein shall be distinctly written upon parchment a particular description containing the quantity of land, situation and the true limits and bounds of the said demised premises, and do and shall deliver the same terriers to the said Dean and Chapter and their successors, in manner following (that is to say), the first terrier in the first year of the said term, and the second terrier in the tenth year of the said term.

That lessee will
make two per-
fect terriers and
deliver the same
to the Dean and
Chapter.

No. XVIII.

Lease by Dean
and Chapter,
&c.

Proviso for
avoiding lease
for non-payment
of rent or
breach of
covenant.

7. PROVIDED ALWAYS, that if the said yearly rent hereby reserved, or any part of the same respectively, shall be unpaid by the space of twenty-one days next after any of the said feasts whereon the same shall have become payable as aforesaid, or if the reparations of the said premises be not well and sufficiently made within the space of twenty-six weeks next after reasonable monition and warning given to the said (*lessee*), his executors, administrators or assigns, or to the tenant or occupier of the said demised premises, by the receiver general, surveyor or auditor of the said Dean and Chapter for the time being; (a) THEN and from thenceforth, this present lease and every clause and matter therein contained, on the part of the said Dean and Chapter, shall be utterly void, anything hereinbefore contained to the contrary thereof notwithstanding.

Testimonium.

8. IN WITNESS whereof to the one part of this Indenture remaining with the said (*lessee*), the said Dean and Chapter have set their common seal; and to the other part, remaining with the said Dean and Chapter, the said (*lessee*) hath set his hand and seal. Dated in the Chapter House of the said Dean and Chapter, the day and year first above written.

(a) In some leases of the above kind it is provided that persons claiming under the lessee by assignment will, or otherwise shall within the space of one year after coming into possession, surrender the lease for the purpose of obtaining a new one, and for avoiding the lease in case of default in so doing, as in the following clause:—

Persons
claiming under
lessee to sur-
render lease for
the purpose of
obtaining a
renewal within
the space of one
year after
coming into
possession.

A. "Or if any person or persons to whose use or possession this present lease shall come, whether by purchase, assignment, gift, bequest or otherwise, from, by, or under the said (*lessee*), shall not within the space of one whole year next after acquiring such possession as aforesaid, surrender the said lease to the said Dean and Chapter, and their successors, to the intent that they may forthwith, or within reasonable time thereafter, receive from the said Dean and Chapter a like new lease of all and singular the said demised premises for so many years as shall then remain unexpired of the term of eighteen years hereby granted, paying only the ordinary charges and fees for the preparation and execution of the same."

SECTION III.
BUILDING LEASES.

No. I.—BUILDING LEASE, WITH SPECIAL COVENANTS FROM LESSEES TO ERECT FIVE DWELLING-HOUSES, AND TO KEEP AND LEAVE THE SAME IN TENANTABLE REPAIR. VARIATION WHERE THE LESSEE COVENANTS TO CONTRIBUTE TO THE REPAIRS OF A COMMON SEWER. ALSO, WHERE HE IS TO BE AUTHORIZED TO MAKE BRICKS ON THE DEMISED PREMISES; OR TO CONCUR IN AN UNDERLEASE OF A PORTION OF DEMISED PREMISES FOR THE PURPOSE OF APPOINTIONING THE RENT.

No. II.—BUILDING UNDERLEASE, WITH SPECIAL COVENANTS TO BUILD IN CONFORMITY WITH A SPECIFIED PLAN; TO PAVE AND FIX IRON RAILINGS IN THE FRONT OF THE HOUSES; TO CONTRIBUTE TOWARDS THE EXPENSES OF CLEANSING AND LIGHTING, WITH COVENANTS FROM LESSOR TO PRODUCE THE ORIGINAL LEASE, AND ALSO TO INDEMNIFY THE UNDERLESSEE FROM THE RENTS AND COVENANTS THEREIN CONTAINED, WITH A STIPULATION THAT LESSEE SHALL NOT BE LIABLE TO PAY ANY RENT BEFORE LESSOR SHALL PRODUCE VOUCHERS OF THE PAYMENT OF THE RESERVED RENTS UNDER THE ORIGINAL LEASE.

No. III.—APPORTIONMENT OF GROUND RENTS BETWEEN TWO PURCHASERS OF LEASEHOLD PREMISES HELD UNDER ONE LEASE, WITH CROSS MUTUAL COVENANTS BY EACH WITH THE OTHER TO PAY HIS APPORTIONED GROUND RENT, AND TO PERFORM THE COVENANTS OF THE LEASE; WITH CROSS POWERS OF DISTRESS FOR THE RECOVERY OF ANY SUMS OF MONEY WHICH THE ONE MAY BE COMPELLED TO PAY THROUGH THE NEGLECT OR DEFAULT OF THE OTHER.

No. I.

BUILDING LEASE, WITH SPECIAL COVENANTS FROM LESSEE TO ERECT FIVE DWELLING-HOUSES, AND TO KEEP AND LEAVE THE SAME IN TENANTABLE REPAIR. VARIATION, WHERE THE LESSEE COVENANTS TO CONTRIBUTE TOWARDS THE CONSTRUCTION OF A COMMON SEWER. ALSO WHERE HE IS TO BE AUTHORIZED TO MAKE BRICKS ON THE DEMISED PREMISES.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum. 3. Habendum to lessee for lease for eighteen years. 4. Covenant from lessee to build five dwelling-houses on demised premises. 5. To erect boundary walls. 6. To keep and leave premises in tenantable repair. 7. To contribute towards the amending of drains and sewers. 8. To insure against damage by fire. | <ol style="list-style-type: none"> 9. Covenant from lessor to concur in underleases for the purpose of apportioning the rent. <hr style="width: 20%; margin: 10px auto;"/> <p style="text-align: center;"><i>Additional or Substituted Clauses.</i></p> <ol style="list-style-type: none"> A. Lessor to have a right of entry for the purpose of repairing the adjoining houses, or to cleanse drains and watercourses. B. That in case lessor makes a common sewer lessees shall contribute proportionally to the expense. C. Power for lessee to dig clay and manufacture bricks for the purpose of building on the demised premises, but not to be sold or employed for other purposes. |
|---|--|

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*lessor*) of, &c., of the one part, and (*lessee*) of, &c., of
the other part.

Testatum.

2. WITNESSETH, that in consideration of the rents and covenants

hereinafter reserved and contained on the part of the said (*lessee*), his executors, administrators and assigns to be paid and performed, the said (*lessor*), DOTH, by these presents, grant and demise unto the said (*lessee*), ALL, &c., [DESCRIBE *parcels*,] and all ways, paths, passages, waters, watercourses, sinks, sewers, gutters, drains, lights, easements, profits, privileges, commodities, advantages, rights, members and appurtenances whatsoever to the said piece or parcel of land belonging or appertaining.

No. I.

*Building Lease
with Special
Covenants.
Variations, &c.*

3. TO HAVE AND TO HOLD, [CONTINUE *habendum, ut ante*, *Habendum*. Section II., No. VI., clause 3, p. 497. ALSO *reddendum, ut ib.*, No. I., clauses 4 and 5, pp. 171, 172. ALSO *covenant from lessee for payment of rents and taxes, ut ib.*, clauses 6 and 7, pp. 470, 471.]

4. AND ALSO that the said (*lessee*), his executors, administrators or assigns will, at his and their own proper costs, within the space of (INSERT *here the time within which the buildings are to be completed*), to be computed from the day of the date hereof, erect, build and complete, and upon the said premises hereby demised, in a good, substantial and workmanlike manner, and with proper materials of all kinds, to be approved of by the surveyor of the said (*lessor*), his heirs or assigns, five substantial dwelling houses, with suitable offices, in strict accordance with the plan and specification intended to be indorsed upon these presents.

*Covenant from
lessee to build
five dwelling-
houses on
demised
premises.*

5. AND ALSO that the said (*lessee*), his executors, administrators or assigns, will, at his and their own costs, in like manner erect and build boundary walls on the said demised premises, and dig out, build, make, and form all such necessary and proper sinks, sewers, gutters and drains in, from, through and under the said demised premises as may be deemed necessary by the said (*lessor*), his heirs or assigns, or his or their surveyor; and also shall and will pay the surveyor's fees for surveying the said works.

*To erect
boundary walls.*

6. AND ALSO that the said (*lessee*), his executors, administrators or assigns, will, at all times during the said term, as often as occasion shall require, well and sufficiently repair, maintain, and amend the said several dwelling-houses, and all other buildings

*To keep and
leave premises
in tenantable
repair.*

No. I.

*Building Lease
with Special
Covenants.
Variations, &c.*

which the said (*lessee*), his executors, administrators or assigns may, during the said term, erect on the said demised premises, and at the expiration or sooner determination of the said term, surrender and yield up the same in good and tenantable repair in all respects. (a)

To contribute
towards the
amending of
drains and
sewers.

7. AND ALSO that the said (*lessee*), his executors, administrators or assigns, shall and will, as often as occasion shall require, pay and allow upon demand a reasonable proportion towards the costs of making, repairing and amending all or any of the fences, sinks, sewers, gutters and drains belonging to the said demised premises, in common with the other premises near or adjoining thereto. (b)

(a) If a lessor is to have a right of entry for the purpose of effecting repairs on the adjacent premises, insert here—

Lessor to have
a right of entry
for the purpose
of repairing
adjoining houses
and to cleanse
drains and
watercourses.

A. AND ALSO that it shall be lawful for the said (*lessor*), his heirs and assigns, or other the person or persons for the time being entitled to the immediate reversion of the said premises hereby demised, or his or their tenant or tenants, occupying the adjoining premises, at all seasonable hours in the day time, on giving three days previous notice in writing to the said (*lessee*), his executors, administrators or assigns, or leaving the same upon the said demised premises, to come upon such part of the same premises to which such notice shall relate, to repair such adjoining houses, or for the purpose of cleansing or scouring any drains or watercourses belonging to the said hereby demised premises connected with the drains or watercourses of the adjoining houses, when and as often as occasion shall require.

(b) Clause to be inserted where the lessor purposed making a common sewer.

That in case
lessor makes
a common
sewer lessee
shall contribute
proportionally
to the expense.

B. AND ALSO in case the said (*lessee*), his heirs or assigns, shall construct a common sewer adjoining the said premises or elsewhere for the receipt of the sewerage or drainage of the same, the said (*lessee*), his executors, administrators or assigns, shall and will upon demand pay unto the said (*lessor*), his heirs or assigns, the same amount in sterling money as such common sewer shall cost

8. AND ALSO that the said (*lessee*), his executors, administrators or assigns, shall and will, as soon as the said dwelling-houses are completed, at his and their own expense, during the residue of the said term hereby granted, effectually insure the said dwelling-houses, and all other buildings erected on the said demised premises, from damage by fire, in some public insurance office in England to be approved of by the said (*lessor*), his heirs or assigns, in the sum of £ or upwards. AND in case the said dwelling-houses and buildings, or any of them, or any part of the same shall be destroyed or damaged by fire, all sums of money which shall be received in respect of the insurance thereof shall be forthwith laid out and expended in the rebuilding or reparation of the said premises. (c) [INSERT COVENANT *not to carry on offensive trades*

No. 1.
Building Lease
with Special
Covenants.
Variations, &c.
To insure
against damage
by fire.

at per foot in proportion to the length of the said demised premises hereby demised, in comparison to the owners of the adjacent premises enjoying the benefit of the said common sewer. AND ALSO that the said (*lessee*), his executors, administrators or assigns, shall and will carry all the sinks, sewers, gutters and drains belonging to the said demised premises into the said common sewer.

(c) In the recent case of *Hewens v. Middleton* (22 L. T. Rep. 62), a lessee covenanted to insure in the joint names of himself and the lessor. The lessee afterwards underlet the premises, and the sublessee insured in the name of the original lessor, it being then unknown whether or not the original lessee was alive, and this was held to be a sufficient performance of the covenant to prevent the lessor from taking advantage of a proviso for re-entry on breach of the covenant. Vice-Chancellor Wood observing that, "the introduction of the name of each was for his own benefit merely. No action can be brought because the lessee has done something more beneficial to the lessor than he had stipulated." In another case also, which has been recently decided (*Crane v. Batter*, 22 L. T. Rep. 220), it was held by the Court of Queen's Bench, that an assignee of a lessor cannot take advantage of a right of entry for a breach committed in the time of the lessor of a covenant to insure against damage by fire.

(d) Where the ground is adapted to the purpose, a lessee is sometimes authorized to dig out the clay and convert into bricks for the purpose of the buildings, as in the following clause :—

C. "AND the said (*lessor*), doth hereby for himself, his heirs, executors and administrators, further grant, covenant and agree with and to the said (*lessee*), his executors, administrators and assigns, that it shall be lawful for the said (*lessee*), his executors,

Power for
lessee to dig
clay and manu-
facture bricks
and tiles for
the purpose of
building on the

No. I. *on demised premises*, Section II., No. IV., clause 6, p. 490. AND
Building Lease with Special Covenants. Variations, &c. PROVISIO *for re-entry for breach of covenant, ut ante*, Section II.,
 No. I., clause 12, p. 473. AND THEN ADD *covenant from lessor for quiet enjoyment, ut ante*, Section II., No. I., clause 10, p. 472.(d)

Covenant from
 lessor to concur
 in underleases
 for the purpose
 of apportioning
 the rent.

9. AND ALSO that in case the said (*lessee*), his executors, administrators or assigns, shall, at any time during the said term, underlet or assign any of the dwelling-houses which he or they shall erect on the said premises hereby demised, or on any other part of the same premises, then the said (*lessor*), his heirs or assigns, shall and will, at the request and costs of the said (*lessee*), his executors, administrators or assigns, concur in any such under-

demised
 premises, but
 not to be sold
 or employed for
 other purposes.

administrators and assigns, at any time during the said term hereby granted, to dig and raise from any portion of the said piece or parcel of land or ground hereby demised, any clay or other materials for the manufacture of bricks or tiles to be used for the erection of any buildings upon the said demised premises, but for no other purposes whatsoever; IN CONSIDERATION whereof the said (*lessee*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*lessor*), his heirs or assigns, that he the said (*lessee*), his executors, administrators or assigns, shall and will fill up to a level with the surface of the adjoining land, all such ground as shall have been so dug up for the purposes aforesaid. AND FURTHER, that if the said (*lessee*), his executors, administrators or assigns, shall at any time sell or dispose of any of the said bricks or tiles so raised and manufactured upon the said demised premises, or shall use or apply the same to any other purposes than for the erection of the buildings hereby covenanted to be erected and built thereon as aforesaid: THEN, and in either of such cases, and so often as the same shall happen, the said (*lessee*), his executors, administrators or assigns, shall and will upon demand pay unto the said (*lessor*), his heirs or assigns, the sum of £ sterling for every thousand bricks or tiles which he shall so sell or dispose of, or use or apply to any other purposes than for the erection of the said buildings as hereinbefore mentioned, and so in proportion for any less quantity than a thousand."

lease or assignment, or underleases or assignments so to be made as aforesaid, for the purpose of apportioning the said yearly rent hereby reserved which each undertenant or assignee, and the portion of the said demised premises so underlet or assigned to him as hereinbefore mentioned, shall from thenceforth be subject or liable to pay; so and in such manner as that each such undertenant or assignee, and his portion of the said premises so underlet or assigned to him, may from thenceforth be exonerated from the remaining rent of the said yearly rent of £ hereby reserved in respect of the whole of the said premises hereby demised; (but so, nevertheless, that the rent payable in respect of such remaining parts of the said premises hereby demised shall be in no wise released or discharged, or the remedies of the said (*lessor*), his heirs or assigns, for receiving and enforcing payment of the same shall be in anywise impeached, prejudiced or affected.) AND ALSO for the purpose of covenanting that such underlessee or assignee of the premises to be so underlet or assigned to him, shall from thenceforth be subject only to such of the covenants, provisoes and agreements on the tenant's or lessee's part to be observed and performed as shall relate to the premises which shall be so underlet or assigned as aforesaid. PROVIDED ALWAYS, that every such underlease or assignment shall contain a proviso for re-entry unto the said (*lessor*), his heirs or assigns, as is hereinbefore contained so far as relates to the rents and covenants to which such underlessee or assignee, or the premises to be so underlet or assigned to him as hereinbefore mentioned, is or are to be or continue liable as aforesaid.

No. 1.
 Building Lease
 with Special
 Covenants.
 Variations, &c.

IN WITNESS, &c.

No. II.

BUILDING UNDERLEASE, WITH SPECIAL COVENANTS TO BUILD IN CONFORMITY WITH A SPECIFIED PLAN; TO PAVE AND FIX IRON RAILINGS IN FRONT OF THE HOUSES; TO CONTRIBUTE TOWARDS THE EXPENSES OF CLEANSING AND LIGHTING: WITH COVENANT FROM LESSOR TO PRODUCE THE ORIGINAL LEASE, AND ALSO TO INDEMNIFY THE UNDERLESSEE FROM THE RENTS AND COVENANTS THEREIN CONTAINED; WITH A STIPULATION THAT LESSEE SHALL NOT BE LIABLE TO PAY ANY RENT BEFORE LESSOR SHALL PRODUCE VOUCHERS OF THE PAYMENT OF THE RESERVED RENTS UNDER THE ORIGINAL LEASE.

1. Parties.
2. Recital of original lease.
3. Covenant from lessee to erect four dwelling-houses, according to a specified plan.
4. To pave the footway, and place iron railings in front of the houses.
5. To contribute a proportionate part towards cleansing the street.
6. Also towards the expenses of cleansing the same.
7. Not to alter the elevation or frontage of the houses.
8. Covenant from lessor to produce the original lease.

9. For payment of the rents and performance of the covenants contained in the original lease.
-

Additional Clauses.

- A. Stipulation that lessee shall not be liable to pay any rent before lessor shall produce sufficient vouchers for the payment of the reserved rents under the original lease.
 - B. Power of distress on remaining property of the lessor by way of further indemnity.
-

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
 BETWEEN (*lessor*), of, &c., of the one part, and (*lessee*) of, &c., of the
 other part. [INSERT *recital of original lease to lessor, ut ante*,
 Section II., No. VIII., clause 2, p. 504.]

2. AND WHEREAS the said (*lessor*) has agreed to grant to the said (*lessee*), an under-lease of the piece or parcel of land or ground hereinafter described, for the residue of the said term of years, excepting the last day thereof, free from all incumbrances, and particularly the said yearly rent of £ reserved by the said hereinbefore recited indenture of lease, subject to the yearly rent intended to be hereby reserved, and the covenants, provisoes and agreements herein contained. [INSERT *testatum and habendum, ut ante*, Section II., clauses 4 and 5, pp. 506, 507, *except that at the latter part of the habendum, instead of stating "SUBJECT to the said yearly rent," &c., substitute "FREE from the said yearly rent of £ , payable to the said (original lessor), under the said hereinbefore written indenture of lease, but subject to the other covenants contained in the said recited indenture, and also to the covenants, conditions, and agreements hereinafter contained."* ALSO *redendum, ut ib.*, No. I., clauses 4 and 5, pp. 469, 470. AND ALSO *covenants from lessee for payment of rent, rates and taxes, ut ib.*, clauses 6 and 7, pp. 470, 471.]

No. II.
Building Underlease, with Special Covenants to Build in Conformity with a Specified Plan.
Recital of original lease.

3. AND ALSO that the said (*lessee*), his executors, administrators or assigns, shall and will at his and their own proper costs, with all convenient speed, erect and finish four substantial dwelling-houses upon the said piece or parcel of land or ground, in conformity to the plan delineated and set out on the back of the second skin of these presents, and to the explanations and references therein specified and set forth; and that each of the said dwelling-houses shall be of the dimensions, and be built and composed of the materials, hereinafter mentioned (that is to say,) [HERE *insert the dimensions and materials of which the buildings are to be composed.*] (a)

Covenant from lessee to erect four dwelling-houses according to a specified plan.

4. AND ALSO shall and will, as soon as the said dwelling-houses

To pave the footway, and

(a) As the dimensions and materials must vary in nearly every individual case, Practical it is scarcely possible to give any form of specifications which would afford much suggestions. practical assistance: as every case of this kind must depend upon the terms the parties may think proper to agree upon, and the specification must of course be framed accordingly.

No. II.

*Building
Underlease,
with Special
Covenants to
Build in
Conformity
with a
Specified Plan.*

place an iron
railing in front
of the houses.

are completed, pave a footway of the breadth of ten feet in front of the same, with proper paving stones, edged off in a workmanlike manner; and shall also fix a neat iron railing ranging in a straight line before the area of each of the said dwelling-houses, properly fixed in some kind of hard stone adapted to the purpose; AND ALSO shall and will from time to time, and at all times during the said term keep, and at the expiration or sooner determination of the said term leave, the whole of the said paved footway and railing in front of the premises hereby demised in proper repair and condition in all respects.

To contribute
a proportionate
part towards
cleansing the
street.

5. AND ALSO shall and will during the said term hereby demised pay and contribute a proper proportionate part, in common with the other inhabitants or occupiers of the said street, towards the expense of cleansing and preventing all dirt, dust, or filth of any kind from accumulating in the said street.

Also towards
the expense of
lighting the
same.

6. AND ALSO shall and will during the said term contribute a proportionate part, in common with the other inhabitants or occupiers of the said street, towards the expense of lighting the same with gas lamps throughout the whole year. [INSERT covenant from lessee to keep and leave premises in repair, *ut ante*, No. I., clause 6, p. 555.]

Not to alter the
elevation or
frontage of the
houses.

7. AND ALSO that none of the said dwelling-houses hereby covenanted to be built as hereinbefore mentioned shall, after the same are completed as aforesaid, be at any time altered, either in frontage or elevation, or be in any way changed, so as to vary the uniformity of the buildings in the said street in accordance with the said plan hereupon indorsed, without the licence or consent of the said (lessor), his executors, administrators or assigns, for that purpose first had and obtained. [ADD covenant from lessee not to carry on offensive trades, *ut ante*, Section II., No. IV., clause 6, p. 490; To INSURE against damage by fire, and to rebuild in case premises are burnt down or destroyed, as in last precedent, clause 8, p. 491. AND then insert covenant from lessor that the rents and covenants of the original lease have been duly paid and performed; that the lease is a valid lease; THAT lessor has good right to underlet; for quiet enjoy-

ment and freedom from incumbrances; and for further assurance, *ut ante*, Section II., No. VIII., clauses 6 to 10 inclusive, pp. 506, 507.]

No. 11.
Building
Underlease,
with Special
Covenants to
Build in
Conformity
with a
Specified Plan.

8. AND ALSO that he the said (*lessor*), his executors or administrators, shall and will from time to time and at all times hereafter, unless prevented by fire or other inevitable accident, at the request and costs of the said (*lessee*), his executors, administrators or assigns, produce and show forth to him or them, or unto such person or persons as he or they shall require, on any trial or hearing in any court of law or equity, or commission for the examination of witnesses, or otherwise as occasion shall require, the said hereinbefore recited indenture of lease of the day of , in manifestation, defence, and support of the title of the said (*lessee*), his executors, administrators and assigns, to the said hereby demised premises, and at such like request and costs furnish him or them with true and attested or other copies, extracts or abstracts, and permit the same to be examined and compared with the said original lease. AND ALSO that the said (*lessor*), his executors, administrators and assigns, shall and will, from time to time and at all times during the said term so granted to him by the said hereinbefore recited indenture of lease as aforesaid, well and truly pay unto the person or persons for the time being entitled to the same, the said yearly rent of £ thereby reserved, and also observe and perform the covenants and agreements therein contained on the part of him the said (*lessor*), his executors, administrators and assigns, to be paid, observed and performed. AND ALSO shall and will save harmless and keep indemnified the said (*lessee*), his executors, administrators and assigns, and the said premises hereby demised, from the payment of the said yearly rent, and from all such distresses or entries that can be made by any person or persons for the time being entitled to the said yearly rent, or by reason or on account of the nonpayment thereof; and also of and from any breach of covenant, or any re-entry on account thereof; and also of and from all damages and costs which the said (*lessee*), his executors, administrators or assigns, or any tenant or occupier of the said premises hereby demised, shall and may incur, pay, or be put unto, by reason of the nonpayment of the said yearly rent reserved, or the breach of any covenant in the said recited indenture of lease

Covenant from
lessor to pro-
duce original
lease.

For payment
of the rents and
performance of
the covenants
contained in the
original lease.

No II.

*Building
Underlease,
with Special
Covenants to
Build in
Conformity
with a
Specified Plan.*

Practical
suggestions.

contained, or any other matter or thing whatsoever in relation thereto. (b)

IN WITNESS, &c.

(b) It is sometimes stipulated that the lessee shall not be liable to pay any rent before the lessor shall produce a receipt for the last half-year's rent reserved upon the original lease, as in the following clause:—

Stipulation
that lessee shall
not be liable to
pay any rent
before lessor
shall produce
sufficient
vouchers of the
payment of the
reserved rents
under the
original lease.

A. "AND ALSO that the said (*lessee*), his executors, administrators or assigns, or the said premises hereby demised, or any part thereof, shall not be liable to any action, suit, distress or entry, or other proceeding either at law or in equity, by the said (*lessor*), his executors, administrators or assigns, for the recovery of the said yearly rent hereby reserved, or any part thereof which shall at any time be in arrear, until the said (*lessor*), his executors, administrators or assigns, shall, if thereunto required by the said (*lessee*), his executors, administrators or assigns, have produced to him or them a good and effectual receipt, from the person or persons for the time being entitled to the said yearly rent of £ , or by some persons or persons lawfully authorised in his or their behalf to give effectual acquittances and discharges for the same yearly rents, down to the then last preceding day appointed for the payment thereof by the said hereinbefore recited indenture of lease. AND in case at any time during the continuance of the said term hereby granted any distress or distresses shall be levied on the said demised premises, or any part thereof, for or on account of the said yearly rent of £ , so reserved by the said hereinbefore recited indenture of lease as aforesaid, or in case the said (*lessee*), his executors, administrators or assigns, shall be obliged or required to pay any sum or sums of money for or on account of such rent, or shall incur or sustain any damage or expenses by reason of the nonpayment thereof by the said (*lessor*), his executors, administrators or assigns, THEN and in either of such cases, and so often as the same shall happen, it shall be lawful for the said (*lessee*), his executors, administrators or assigns, to retain so much of the said yearly rent hereby reserved, either then or thereafter to become due, as shall reimburse him or them all such rents, moneys and expenses as he or they shall have paid, incurred

or expended as aforesaid, together with interest for the same at the rate of 5*l.* for every 100*l.* by the year from the time at which such expenditure shall have been made."

No. 11.

*Building
Underlease,
with Special
Covenants to
Build in
Conformity
with a*

Specified Plan.

B. "AND ALSO, that in case the said (*lessee*), his executors, administrators or assigns, shall at any time hereafter during the continuance of the said term hereby granted, pay or incur any costs, damages or expenses, exceeding the amount of the rent hereby reserved which shall for the time being happen to be due from him or them to the said (*lessor*), his executors, administrators or assigns, THEN and in every such case, and so often as the same shall happen, it shall be lawful for the said (*lessee*), his executors, administrators or assigns, to enter into and distrain upon all or any part of the remaining portion of the premises so demised to the said (*lessor*) as aforesaid by the said hereinbefore recited indenture of lease of the day of , and not comprised in this present demise, for all and every such sums of money, costs, damages and expenses, as the said (*lessee*), his executors, administrators or assigns, shall have so paid or incurred as aforesaid, and the distress and distresses then and there found to take, lead, drive, carry away and impound, and in pound to detain and keep, until all and every such sum and sums of money, costs, charges, damages and expenses, so paid or incurred by the said (*lessee*), his executors, administrators or assigns, together with the costs of keeping such distress or distresses shall be fully paid: and, in default of payment thereof, in due time after such distress or distresses shall have been so taken as aforesaid, to appraise, sell, and dispose of the same, or any part thereof, or otherwise to act therein according to due course of law, in like manner as in case of distress for non payment of rent reserved upon common leases. TO THE INTENT, that thereby and therewith the said (*lessee*), his executors, administrators or assigns, shall or may be fully paid and satisfied all and every such sum and sums of money, costs, charges, damages, and expenses as aforesaid."

*Power of
distress on
remaining pro-
perty of the
lessor by
way of further
indemnity.*

[SEE the form of the apportionment of rent between two purchasers of leasehold premises, with cross mutual powers of distress, ante, Part I., Section V., Nos. IV. and VI., pp. 385, 391.]

No. III.

APPORTIONMENT OF GROUND RENTS BETWEEN TWO PURCHASERS OF LEASEHOLD PREMISES HELD UNDER ONE LEASE, WITH CROSS MUTUAL COVENANTS BY EACH WITH THE OTHER TO PAY HIS APPORTIONED GROUND RENT, AND TO PERFORM THE COVENANTS OF THE LEASE; WITH CROSS POWERS OF DISTRESS FOR THE RECOVERY OF ANY SUMS OF MONEY WHICH THE ONE MAY BE COMPELLED TO PAY THROUGH THE NEGLECT OR DEFAULT OF THE OTHER. (a)

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of lease. 3. That lessee has erected two dwelling-houses on the premises which he has sold and assigned to the two purchasers. 4. Of agreement for the apportionment of the rent. 5. First testatum, by which one purchaser covenants to indemnify the | <ol style="list-style-type: none"> other from the rents and covenants of the lease, so far as concerns his own portion of the premises. 6. Power of distress for the recovery of any sums of money which the other purchaser shall pay in respect of the rents and covenants agreed to be paid and performed by the covenantor. 7. Similar covenants of indemnity by the other purchaser. |
|---|--|

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN A. B. of, &c., of the one part, and C. D. of, &c., of
the other part.

Recital of lease.

2. WHEREAS by indenture of lease bearing date on or about
the day of , made between (*lessor*) of the one part, and
(*lessee*) of the other part, It IS WITNESSED that the said (*lessor*),

(a) See practical observations as to the apportionment of rents, *ante*, p. 253, note (a).

for the considerations therein mentioned, demised unto the said (lessee), ALL, &c. [DESCRIBE *parcels*,] To HOLD the same with the appurtenances unto the said (lessee), his executors, administrators and assigns, from thenceforth for the term of ninety-nine years, (b) subject to the yearly rent of 12*l.* payable quarterly as therein mentioned, and to certain clauses, stipulations, and agreements in the now reciting indenture of lease reserved and contained.

No. III.

*Apportionment
of Ground
Rents between
two Purchasers
of Leasehold
Premises held
under one
Lease, with
cross mutual
Covenants, &c.*

3. AND WHEREAS the said (lessee), shortly after obtaining the said hereinbefore recited lease of the said piece or parcel of land, erected two dwelling-houses with suitable offices thereon, and hath since sold one of the said dwelling-houses to the said (A. B.), and the other of the said dwelling-houses to the said (C. D.), both of which said dwelling-houses have been respectively assigned by the said (lessee) to the said (A. B.) and (C. D.) by two several indentures of assignment, bearing even date herewith but executed previously, for all the residue of the said term of ninety years; (c) subject nevertheless to the payment of the yearly rent of 6*l.* in respect of each of the said dwelling-houses, being one moiety of the said yearly rent of 12*l.* so reserved by the said hereinbefore recited indenture of lease as aforesaid; and also subject to the conditions, stipulations, provisoes, and agreements in the same indenture of lease contained, and which on the lessee's part are or ought to be observed and performed, so far as the same severally relate to each of the said two dwelling-houses thereby assigned.

*That lessee has
erected two
dwelling-houses
on the premises,
which he has
sold and
assigned to two
purchasers.*

4. AND WHEREAS at the time of entering into the contract for the purchase of the said two dwelling-houses it was agreed that each of them, the said (A. B.) and (C. D.), should each pay the yearly rent of 6*l.* in respect of the said premises so purchased by him, being one moiety of the said yearly rent of 12*l.*; and for the

*Of agreement
for the appor-
tionment of
the rent.*

(b) If the lease is determinable on lives, substitute for the above recital clause 2, No. I., *ante* (Part II., Section II.), p. 243.

(c) If the lease is determinable on lives, add here:

“determinable as aforesaid.”

No. III.

*Apportionment
of Ground
Rents between
two Purchasers
of Leasehold
Premises held
under one
Lease, with
cross mutual
Covenants, &c.*

more effectually apportioning the same equally between them the said (*A. B.*) and (*C. D.*), and for indemnifying each of them, his executors, administrators and assigns, and the said dwelling-house and premises purchased by him, from the rents and covenants reserved and contained in the said hereinbefore recited indenture of lease on the lessee's part to be paid, observed and performed, in respect of the premises purchased by the other of them, it has been further mutually agreed between both of them, the said (*A. B.*) and (*C. D.*), that they should respectively enter into the covenants hereinafter contained.

First testatum,
by which one
purchaser
covenants to
indemnify the
other from the
rents and
covenants of
the lease so far
as concerns his
own portion of
the premises.

5. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the covenants hereinafter contained on the part of the said (*C. D.*), the said (*A. B.*) doth hereby, for himself, his heirs, executors and administrators, covenant with the said (*C. D.*), his executors, administrators and assigns, that he the said (*A. B.*), his executors, administrators or assigns, shall and will, from time to time and at all times hereafter during the continuance of the said term of ninety-nine years, well and truly pay or cause to be paid, unto the person or persons for the time being entitled to receive the said ground rent or yearly sum of 12*l.* so reserved as aforesaid in and by the said hereinbefore recited indenture of lease, the clear yearly rent or sum of 6*l.*, being one moiety of the said yearly rent of 12*l.*, when and as the same shall become due and payable, according to the true intent and meaning of the same indenture of lease; and shall and will, from time to time during the continuance of the said term, duly observe and perform the covenants in the said recited indenture of lease contained on the lessee's part to be observed and performed, so far as relate to, or ought to be observed and performed in respect of, the dwelling-house and premises so purchased by the said (*A. B.*), and so assigned to him by the said indenture bearing even date herewith as aforesaid; AND ALSO shall and will, from time to time and at all times hereafter, keep harmless and indemnified the said (*C. D.*), his heirs, executors, administrators, and assigns, and his and their lands and tenements, goods and chattels, of, from, and against all actions, suits, and other proceedings, which may be brought or prosecuted against the said (*C. D.*), his executors, administrators or assigns, by reason of any neglect, breach, or

default which shall or may happen by reason of such nonpayment, or non-observance, or non-performance of the said covenants or any of them.

No. III.

*Apportionment
of Ground
Rents between
two Purchasers
of Leasehold
Premises held
under one
Lease, with
cross mutual
Covenants, &c.*

6. AND MOREOVER, that in case the said (*C. D.*), his executors, administrators or assigns, shall or may at any time or times hereafter bear, sustain, pay, or incur any costs, charges or expenses, for or on account of the said yearly rent of 6*l.*, or for or on account of the breach, non-observance, or non-performance of the said covenants on the lessee's part to be paid, observed and performed, THEN, and in every such case, and so often as the same shall happen, it shall be lawful for the said (*C. D.*), his executors, administrators or assigns, into and upon the said dwelling-house and premises so purchased by and assigned unto the said (*A. B.*) as aforesaid by the said hereinbefore recited indenture of assignment bearing even date herewith to enter, and then and there to distrain for all and every the sum and sums of money, costs, charges and expenses, which he the said (*C. D.*), his executors, administrators or assigns, shall so sustain, pay, or incur, and the distress and distresses then and there found to take, lead, drive, carry away and impound, and in pound to detain and keep, until all such sum and sums of money, costs, charges and expenses, so borne, sustained, paid or incurred by the said (*C. D.*), his executors, administrators or assigns, together with the costs of keeping such distress or distresses, shall be fully paid and satisfied; and, in default of payment thereof in due time after such distress or distresses shall have been so taken as aforesaid, to appraise, sell, and dispose of such distress or distresses, or any part thereof, or otherwise to act therein according to due course of law, in like manner as in the case of distress for the nonpayment of rent reserved upon common leases; TO THE INTENT that thereby and therewith the said (*C. D.*), his executors, administrators or assigns, shall or may be fully paid and satisfied all such sum and sums of money, costs, charges and expenses, as aforesaid.

*Power of
distress for the
recovery of any
sums of money
which the other
purchaser shall
pay in respect
of the rents and
covenants
agreed to be
paid and per-
formed by the
covenantor.*

7. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said recited agreement, and in consideration of the covenants hereinbefore contained on the part of the said

*Similar
covenants of
indemnity by
the other pur-
chaser.*

No. III. (other purchaser), his heirs, executors and administrators, HE the
 Apportionment of Ground Rents between two Purchasers of Leasehold Premises held under one Lease, with cross mutual Covenants, &c.

said (one purchaser), doth hereby for himself, his heirs, executors and administrators, covenant, &c. [INSERT the same covenants, *mutatis mutandis, ut ante*, clauses 5 and 6.]

IN WITNESS, &c.

SECTION IV.

GRANTS OF MINING SETTS, LEASES, AND
LICENCES TO SEARCH FOR MINES AND
MINERALS.

No. I.—GRANT OF THE EXCLUSIVE LICENCE TO WORK A LIME QUARRY FOR A TERM OF TWENTY-ONE YEARS.

No. II.—GRANT OF A SETT OR LICENCE TO SEARCH FOR METALS AND MINERALS FOR A TERM OF TWENTY-ONE YEARS, WITH USUAL COVENANTS. VARIATION WHERE THE SETT IS GRANTED BY MORTGAGOR AND MORTGAGEE.

No. III.—GRANT OF A SETT TO SEARCH FOR MINERALS FOR A TERM OF SIXTEEN YEARS, IN CONSIDERATION OF THE SURRENDER OF A FORMER SETT, THE DUES RESERVED BY THE PRESENT GRANT BEING A MONEY PAYMENT UNTIL THE GRANTOR SHALL GIVE NOTICE TO RECEIVE THE DUES IN KIND; GRANTOR RESERVING A RIGHT TO DRIVE ADITS, &c. WITHIN THE LIMITS OF THE SETT, BUT SO AS NOT TO INTERFERE WITH THE DUE ENJOYMENT THEREOF BY THE GRANTEES, WITH A PROVISIO THAT IF ANY TIN SHALL BE RAISED, ONE-THIRTIETH PART ONLY OF SUCH TIN IS TO BE RENDERED IN LIEU OF THE ONE-FIFTEENTH PART THEREOF PREVIOUSLY RESERVED. VARIATION WHERE THE GRANTOR IS TO HAVE THE OPTION OF PURCHASING THE MACHINERY.

No. IV.—GRANT OF MINING SETT BY TRUSTEES UNDER WILL FOR A TERM OF TWENTY-ONE YEARS, WITH A RESERVATION OF ONE-TWELFTH OF ALL COPPER, AND ONE-FIFTEENTH OF ALL TIN, RAISED ON THE PREMISES, TO BE RENDERED IN KIND OR THE VALUE PAID IN MONEY AT THE OPTION OF THE GRANTORS, WITH SPECIAL COVENANTS FROM THE GRANTEES TO RENDER ONCE IN EVERY YEAR A CORRECT PLAN OF THE WORKINGS OF THE MINE, AND UPON NOTICE TO GIVE A TRUE LIST OF ALL SUCH PERSONS AS ARE OR SHALL HAVE BEEN ADVENTURERS IN THE MINE, AND OF THEIR RESPECTIVE SHARES AND INTERESTS THEREIN.

No. V.—LEASE OF A COAL MINE FOR A TERM OF FORTY YEARS, WITH USUAL POWERS FOR WORKING THE SAME, RESERVING A NOMINAL SURFACE RENT FOR THE FIRST THREE YEARS OF THE TERM, AND AN AUGMENTED FIXED RENT FOR THE REMAINDER, AND A RESERVATION OF ONE-EIGHTH OF THE GROSS MONEYS FOR WHICH THE COAL SHALL BE SOLD.

No. VI.—LEASE OF A LEAD MINE WHERE ALL THE ORE RAISED IS TO BE SMELTED ON THE PREMISES.

No. I.

GRANT OF THE EXCLUSIVE LICENCE TO WORK A LIME
QUARRY FOR A TERM OF TWENTY-ONE YEARS.

-
- | | | |
|--|--|---|
| 1. Parties.
2. Testatum.
3. Habendum.
4. Reddendum. | | 5. Covenant from grantee to work the
quarries in an effectual manner.
6. Power of distress.
7. Proviso for avoiding the grant for
nonpayment of rent, or breach of
covenant. |
|--|--|---|
-

Parties.

1. THIS INDENTURE, made the day of , A.D. 18 ,
BETWEEN (*grantor*), of, &c., of the one part, and (*grantee*), of, &c.,
of the other part.

Testatum.

2. WITNESSETH, that in consideration of the yearly rents,
covenants and agreements hereby reserved and contained on the
lessee's part to be observed and performed, the said (*grantor*) DOTH
by these presents give and grant unto the said (*grantee*), his
executors, administrators and assigns, full, free, irrevocable, sole,
and exclusive licence, liberty, power and authority, to work all
those quarries or strata of limestone, situate, &c. [*DESCRIBE the
lands throughout which the right is to extend*], and to carry away
and dispose of the produce thereof, at his or their own will and
pleasure; AND for the purposes aforesaid to make any leats,
drains, or watercourses for clearing the said quarries from any
waters which may accumulate therein, and to erect such buildings,
steam and other engines and machinery, as may be deemed neces-
sary for effectually carrying on the works of the said quarries, and
also to use, repair or construct any railways, carriage or other
ways or roads whatsoever, in, to, or from the said quarries.

3. TO HAVE, HOLD, USE, EXERCISE AND ENJOY the said licence, liberty, power and authority hereby granted, unto the said (*grantee*), his executors, administrators and assigns, from the day next before the date of the date of these presents, for and during and unto the full end and term of twenty-one years thenceforth next ensuing.

No. I.

*Grant of the
exclusive
Licence to Work
a Lime Quarry
for a Term
of Twenty-one
Years.*

Habendum.

4. YIELDING, RENDERING AND PAYING, therefore, yearly and every year during the said term, unto the said (*grantor*), his heirs or assigns, the yearly rent or sum of sterling, by equal half-yearly payments, on the 25th day of March, and the 29th day of September in every year; the first payment thereof to be made on the 25th day of March next ensuing, free from all rates, taxes, assessments, impositions and deductions whatsoever. [INSERT covenant by grantee for payment of rent, rates, and taxes, &c. ut ante, Section II., No. 1., clauses 6 and 7, pp. 470, 471.]

Reddendum.

5. AND ALSO shall and will work the said quarries in a proper and efficient manner in all respects.

*To work the
quarries in an
effectual
manner.*

6. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that in case the said yearly rent hereby reserved, or any part of the same, shall be in arrear and unpaid for the space of twenty-one days next after any of the said days hereinbefore appointed for payment thereof, THEN and in such case, and so often as the same shall happen, it shall be lawful for the said (*grantor*), his heirs or assigns, to distrain upon any part of the said quarries, or other the said premises, for the same rent, and all arrears thereof, and the goods, chattels, effects and property of the said (*grantee*), his partners, co-adventurers, executors, administrators or assigns, then and there found, to take, carry away, impound and dispose of, in the same way as landlords are authorised to do for rent in arrear upon ordinary leases, TO THE INTENT that the said yearly rent, or so much thereof as shall be due, and all costs occasioned by the non-payment thereof, shall thereby and therewith be fully satisfied and discharged.

*Power of
distrain.*

7. PROVIDED ALWAYS, AND IT IS HEREBY FURTHER DE-

*Proviso for
avoiding the*

No. I.

*Grant of the
exclusive
Licence to Work
a Lime Quarry
for a Term
of Twenty-one
Years.*

grant in case of
nonpayment of
rent or breach
of covenant.

CLARED, that in case the yearly rent hereby reserved, or any part thereof, shall be in arrear for the space of forty days next after the said days hereinbefore appointed for payment thereof, being demanded, or if breach shall happen to be made in all, any or either of the covenants hereinbefore contained, on the part of the said (*grantee*), his executors, administrators, or assigns, to be performed, THEN, and in such case it shall be lawful for the said (*grantor*), his heirs or assigns, by notice in writing under his hand, and delivered to the said (*grantee*), his executors, administrators or assigns, or left at his or their last or usual place of abode or business in England, to determine the right, liberty, licence, power and authority hereby given, and immediately thereupon these presents, and every clause, matter and thing herein contained, shall be from thenceforth absolutely null and void, except with respect to the remedies of the said (*grantor*), his heirs or assigns, for any prior breach of covenant herein contained.

IN WITNESS, &c.

No. II

GRANT OF A SETT OR LICENCE TO SEARCH FOR METALS AND MINERALS FOR A TERM OF TWENTY-ONE YEARS, WITH USUAL COVENANTS. VARIATION, WHERE THE SETT IS GRANTED BY MORTGAGOR AND MORTGAGEE. (a)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum. 3. Habendum. 4. Reddendum. 5. Covenant from grantees for payment of dues. 6. To give three days' clear notice previous to every weighing and division. 7. To work the mine in a proper and effectual manner. 8. To keep open and support adits, shafts, &c., and render the same in sufficient repair at the end of the term. 9. To permit grantor to view the condition of the mine, and to repair upon notice. 10. To furnish a list of the names of the adventurers. 11. Proviso for avoiding the sett in case of nonpayment of dues or breach of covenant. | <ol style="list-style-type: none"> 12. Covenant from grantor for peaceable enjoyment. <p style="text-align: center;">—</p> <p style="text-align: center;"><i>Substituted or additional Clauses.</i></p> <ol style="list-style-type: none"> A. Recital that grantor, with mortgagee's concurrence, has agreed to grant the sett. B. Granting clause, where the sett is granted by mortgagor and mortgagee. C. Proviso that dues shall be paid to the mortgagor, until notice from mortgagee to the contrary. D. Substituted clause, where the dues are payable quarterly, and one-twelfth is to be paid before and one-fifteenth after a steam engine shall be erected and put to work effectually. E. To pay the rents quarterly. F. To deliver a true account of all sales made during the preceding quarter. G. Covenant from grantees to make compensation for surface damage. |
|---|---|

1. THIS INDENTURE, made the day of A.D. 18 , Parties.

(a) If the sett is granted by mortgagor and mortgagee, the latter, having the legal estate, must be made the party of the first part. Practical directions.

No. II.

Grant
of a Licence to
Search for
Metals, &c., for
a Term of
Years.

Testatum.

BETWEEN (*grantor*) of, &c., of the one part, and (*grantees*) of, &c., of the other part. (*b*)

2. WITNESSETH that, in consideration of the dues and payments hereby reserved, and of the covenants and agreements hereinafter contained on the part of the said (*grantees*), their partners, co-adventurers, executors, administrators and assigns, (*c*) [HE the said (*grantor*) DOTH by these presents give and grant] unto the said (*grantees*), their partners, co-adventurers, executors, administrators and assigns, full and free liberty, licence, power and authority, to dig, work, mine, and search for tin, tin ore, copper, copper ore, lead, lead ore, and all other ores, metals and metallic minerals, in, under, and throughout ALL that [DESCRIBE *parcels to be comprised within the limits of the sett*]; and the tin, tin ore, copper, copper ore, lead, lead ore, and all other metals, ores, and metallic minerals there found, to raise and bring to grass, and there to stamp, spall, pitch, dress, and make merchantable and fit for sale, and the same to take, carry away, convert and dispose of, at their and each of their own will and pleasure; and, subject to the reservations hereinafter contained, and within the limits of the sett hereby granted, to dig, work, and make such adits, pits, shafts, drifts, leats, and water-

(*b*) If the sett is granted by mortgagor and mortgagee, recite here the mortgage; that the mortgage is still subsisting, *ut ante*, Section II., No. IX., clause 2, p. 510; and then insert the following clause:—

That grantor,
with
mortgagee's
concurrence,
has agreed to
grant the sett.

A. "AND WHEREAS the said (*grantor*), with the consent and concurrence of the said (*mortgagee*), hath agreed to grant a sett or licence to work and search for metals and minerals in, under, and throughout the hereditaments and premises hereinafter described, upon the terms and conditions hereinafter specified."

(*c*) If the sett is granted by mortgagor and mortgagee, substitute for the words within the brackets above—

Granting
clause, where
the sett is
granted by
mortgagor and
mortgagee.

B. "(*mortgagee*) (at the request and by the direction of the said (*grantor*), testified by his being a party hereto), DOTH by these presents give and grant, and the said (*grantor*) DOTH by these presents give, grant, ratify and confirm."

courses, and to erect such sheds, buildings, steam and other engines and machinery, as the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, shall consider necessary and convenient for the more effectual exercise of the liberty, licence, powers and authorities hereby granted.

No. II.
Grant
of a Licence to
Search for
Metals, &c., for
a Term of
Years.

3. TO HAVE, HOLD, USE, EXERCISE AND ENJOY the said *Habendum.*
liberty, licence, powers and authorities hereby granted, unto the said (*grantees*), their executors, administrators and assigns, from the day next before the day of the date of these presents, for the term of twenty-one years, thenceforth next ensuing.

4. YIELDING AND PAYING, LAYING OUT AND DELIVERING, *Reddendum.*
unto and for the use of the said (*grantor*)(*d*), his heirs or assigns

(*d*) Where the sett is granted by mortgagor and mortgagee, the reservation must be made to the mortgagee instead of the grantor, as done in the above form, and the following proviso should be superadded:—

C. "PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, *Proviso that*
that in the meantime, and until the said (*mortgagee*), his heirs, *dues shall be*
executors, administrators or assigns, shall require to have the *paid to the*
payment or render of the said one-fifteenth part or share or dish *mortgagor,*
of the said tin, tin ore, copper, copper ore, lead, lead ore, and other *until notice*
metal ores, metals and metallic minerals, to be made to him or *from mortgagee*
them, and shall give notice thereof in writing to the said (*grantees*), *to the contrary.*
their partners, co-adventurers, executors, administrators or assigns,
or deliver or leave the same at the counting-house of the mine
intended to be carried on by virtue of these presents, the same
one-fifteenth part or share or dish of the said tin, tin ore, copper,
copper ore, lead, lead ore, and of all other metals, ores, and metallic
minerals, raised and gotten within the limits of the sett hereby
granted, shall be paid or rendered unto the said (*grantor*), his
heirs or assigns, whose receipt or receipts, until such notice shall
be so given, left, or delivered as aforesaid, shall be a sufficient
discharge for the said fifteenth part or share or dish of the said
tin, tin ore, copper, copper ore, lead, lead ore, and all other metals,
ores, and metallic minerals, or so much of the same as in such
receipt or receipts shall be expressed to have been received, and

No. II.
 Grant
 of a Licence to
 Search for
 Metals, &c., for
 a Term of
 Years.

one full fifteenth part or share or dish of all tin, tin ore, copper, copper ore, lead, lead ore, and all other metals, ores, and metallic minerals which shall or may, by virtue of these presents, be found and gotten, raised and brought to grass, within the limits of the sett hereby granted, during the said term, the same having been first well and sufficiently spalled, tried, pitched, washed, stamped, dressed, or otherwise, according to the respective qualities thereof, made merchantable and fit to be smelted, and fairly divided and laid out upon the grass, at the costs and charges of the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns. (*e*)

fully exonerate the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, from all claims and demands in respect thereof."

(*e*) If the dues are to be paid quarterly, and a reduced amount to be received when a steam engine shall be effectually set to work on the mine, substitute the following clause :—

Substituted
 clause, where
 the dues are
 payable
 quarterly, and
 one-twelfth is
 to be paid
 before, and one-
 fifteenth after a
 steam engine
 shall be erected
 and put to work
 effectually.

D. "YIELDING AND PAYING, therefore, yearly and every year during the said term, until a steam engine of sufficient power to work and prosecute any mine that has been or may be discovered within the limits of the sett hereby granted, has been erected and set and effectually kept to work thereon, unto the said (*grantor*), his heirs or assigns, for or in respect of all metals, ores, and metallic minerals, to be raised, gotten or obtained within the limits aforesaid, such a rent or sum or sums of money as will amount to one equal twelfth part of the gross money (whether in fact such moneys shall be received or not) for which the same metals, ores and metallic minerals shall, from time to time during the said term, be sold. And, as soon as such steam engine as aforesaid shall have been erected thereon, and whilst the same shall be effectually kept at work as aforesaid (in lieu of such rent or sum of money as aforesaid), such rent or sum or sums of money as aforesaid as will amount to one-fifteenth part of the gross moneys (whether in fact such moneys shall be received or not) for which the same metals, ores, and metallic minerals shall, from time to time thereafter and during the remainder of the said term, be sold,

5. AND the said (*grantees*) for themselves, jointly and severally, and for their several and respective heirs, executors and administrators, do, and each and every of them doth hereby covenant, promise and agree with and to the said (*grantor*), (*f*) his heirs and assigns, in manner following: (that is to say,) that they the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, shall and will well and truly pay(*g*) and deliver, or

No. II.

Grant
of a Licence to
Search for
Metals, &c., for
a Term of
Years.

Covenant from
grantees for
payment of
dues.

the said metals, ores and minerals respectively having been first well and duly dressed, and rendered merchantable, by and at the expense of the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns; the yearly rent or sums of money respectively as aforesaid to be paid, and payable by quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year; each quarterly payment to consist of the said rent or sum or sums of money hereby respectively reserved and made payable in respect of the sales of the metals, ores and metallic minerals made during the then preceding quarter of a year, whether such metals, ores and metallic minerals shall have been actually paid for or not, and such quarterly payments to be made without any deduction or abatement whatsoever."

(*f*) If the sett is granted by mortgagor and mortgagee, the covenants must be entered into with the mortgagee. Practical directions.

(*g*) If the dues are to be rendered quarterly, and a reduced amount to be paid when a steam engine is set to work, substitute for the remainder of above clause the two following clauses:—

E. "or cause to be paid unto the said (*grantor*), his heirs or assigns, the respective rents, sum or sums of money hereinbefore reserved and made payable as aforesaid, upon the respective days and times, and in manner hereinbefore appointed for payment of the same respectively, according to the true intent and meaning of these presents, without any deduction or abatement whatsoever."

To pay the
rents quarterly.

F. "AND ALSO shall and will on each of the said days of payment of the said rent in every year during the said term, make out and deliver unto the said (*grantor*), his heirs or assigns, or to his

To deliver a
true account of
all sales made
during the

No. II.
Grant
of a Licence to
Search for
Metals, &c., for
a Term of
Years.

cause to be paid and delivered, unto the said (*grantor*), his heirs or assigns, the said one-fifteenth part, share or dish of all such tin, tin ore, copper, copper ore, lead, lead ore, and all other ores, metals and metallic minerals as shall be found, gotten and raised and brought to grass within the limits of the sett hereby granted, after the same shall be so made merchantable as aforesaid, free and clear of and from all and all manner of costs and charges of raising, spalling, trying, pitching, washing, stamping and dressing the same, or otherwise making them merchantable, and dividing and laying them out upon the grass, and also free and clear of and from all rates, taxes, charges and impositions whatsoever, which shall or may at any time hereafter, during the said term hereby granted, be rated, taxed, charged, assessed, or imposed upon such tin, tin ore, copper, copper ore, lead, lead ore, and other metals, ores and metallic minerals, or the money which shall arise from the sale thereof, or on the said one-fifteenth part or share or dish thereof hereby reserved, or upon the said (*grantor*), his heirs or assigns, for or in respect thereof (except the present or any future tax on property or income.)

To give three
 clear days'
 notice previous
 to every
 weighing and
 division.

6. AND ALSO shall and will give three clear days' notice in writing at the least to the said (*grantor*), his heirs or assigns, or his or their respective toller or agent, of every time of weighing or division of the said tin, tin ore, copper, copper ore, lead, lead ore, and all other ores, metals, and minerals during the said term; and shall not nor will at any time hereafter during the said term, without the previous consent in writing of the said (*grantor*), his heirs or assigns, or of his or their respective known agent or toller first had and obtained, take or carry away any of the tin, tin ore, copper, copper ore, lead, lead ore, or any other metals, ores, or metallic minerals, which shall be found within the limits of the

preceding
 quarter.

or their toller or agent, full, true and correct summaries of the accounts in respect of the limits aforesaid, of all sales made and realized during the then preceding quarter of a year, so as to show the full amount of the rents or sums of money in respect of such quarter of the year as aforesaid."

sett hereby granted, before the same shall be weighed and divided, and notice of such weighing and division shall be given in manner aforesaid, and the said one-fifteenth part, share, or dish hereby reserved, shall be well and truly paid or laid out in manner hereinafter mentioned.

No. 11.
Grant
of a Licence to
Search for
Metals, &c., for
a Term of
Years.

7. AND ALSO, that the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, shall and will from time to time, and at all times hereafter during the said term, work the land or ground, wherein licence and liberty to work and search for metals, ores, and metallic minerals is mentioned to be hereby granted, in the most proper and effectual manner, and with a sufficient number of labouring miners at all usual working times, and with as much mechanical force, either by a steam engine or otherwise, as may be required for drawing off the water from the deepest part of the workings, according to the most usual and approved mode of working mines in the said county of Cornwall, unless only whilst prevented by inevitable impediments, and in so doing shall do no other injury or damage to the surface of the land or ground within which liberty to work and mine is hereby granted, than such as shall be absolutely necessary and unavoidable.(h)

To work the
mine in a
proper and
effectual
manner.

(h) If compensation is to be made for surface damage (see * note, next page), then add—

G. "AND ALSO shall and will make all due compensation for such injury or damage so done to the surface of the said land or ground, or for any damage or injury arising from any act or neglect in the exercise of any of the liberties, licences, powers and authorities granted by these presents, unto the said (*grantor*), his heirs or assigns, or the tenant or occupier for the time being of such lands wherein such injury or damage shall be so done as aforesaid; and in case any dispute shall arise as to the amount to be paid for such damage or injury, the same shall be determined by the award of two referees or their umpire in the usual manner; and if either party shall refuse to name a referee, then the award of the referee appointed by the other party shall be binding and conclusive on all parties, and any award so made as aforesaid shall

Covenant from
grantees to
make
compensation
for surface
damage.

No. 11.

*Grant
of a Licence to
Search for
Metals, &c., for
a Term of
Years.*

To keep the
buildings,
embankments,
adits, water-
courses, and
also all shafts,
&c., in proper
repair.

8. AND ALSO shall and will from time to time, and at all times hereafter during the said term, keep in good order, repair and condition, all the engine-houses and other buildings within the limits of the sett hereby granted; and also all the banks, embankments, watercourses, leats, canals, trenches, dams, drains, sluices, reservoirs, railways, roads, ways, bridges, paths, passages, walls, fences, gates, and other works whatsoever which shall or may, at any time during the said term, belong or appertain to the mine intended to be carried on by virtue of these presents; and also well and sufficiently keep open and support every adit and shaft to be driven, sunk, or made within the limits of the sett hereby granted, which shall be necessary to be kept open and supported for the purpose of working the mine intended to be carried on by virtue of these presents, with proper and convenient timber, fixed samples, props and other contrivances; and, at the end or sooner determination of the said term, the same houses, buildings, banks, embankments, watercourses, leats, canals, trenches, dams, drains, sluices, reservoirs, railways, roads, ways, bridges, paths, passages, walls, fences and gates, adits, shafts, and other works, so well and sufficiently repaired, kept open and supported as aforesaid, and the whole of the said intended mine in a regular course of working, according to the most approved practice of good mining; and for the further prosecution thereof, shall and will peaceably and quietly leave and yield up unto the said (*grantor*), his heirs or assigns, all

or may be made a rule of Her Majesty's Court of Queen's Bench at Westminster."

Practical
observations.

* With respect to the liability to make compensation for injuries to third parties occasioned by the working of a mine, the law appears to be, that in the absence of an agreement to the contrary, in all cases where a lease or licence to work has been granted, the grantees or adventurers are responsible for all injuries occasioned to the owners of property unconnected with the lands in which the mines are worked: (*Bainbridge on Mines*, 331, 343.) But where a mine is carried on for the benefit of the owner of the lands, and is worked by his agent, workmen, or even contractors, such owner will be the responsible party for all injuries arising from the working of such mine; for notwithstanding other persons may have contracted with him for the management of the whole concern without his interference, yet where the work is carried on for his own benefit, and on his property, all the persons must be considered as his servants or agents, notwithstanding any such arrangement, and he must be responsible to all the world for their acts: (*Littledale v. Lonsdale*, 2 H. Black. 267, 299, cited 7 East, 371, 372; *Stone v. Cartwright*, 6 T. R. 411; *Bush v. Steinman*, 1 Bos. & Pull. 404; and see *Bainbridge on Mines*, 329-331.)

wooden sheds, engines, whims, pumps and other machinery, and the materials thereto belonging, reasonable use and wear and tear, and unavoidable accidents or casualties until the consequences thereof can be repaired, only excepted.

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a Term of
Years.*

9. AND ALSO shall and will from time to time, and at all times hereafter during the said term, permit and suffer the said (*grantor*), his heirs or assigns, and his or their respective agent, steward, or toller for the time being, to go down into, ascend, or return into or from any part of the said mine, to inspect, examine and measure all or any adit or adits, shaft, or shafts, work or works, which shall or may be dug, wrought, driven, sunk or made, within the limits of the sett hereby granted; and for that purpose to make use of the tackle, buckets, ropes, keebles, or any other contrivances being within or about the said mine, when and so often as he or they respectively shall think proper. AND in case upon any inspection, in manner aforesaid, of the works within the limits aforesaid, the same, or any part thereof, shall be found defective or out of repair, and not in proper order and condition in pursuance of the covenant in that behalf herein contained, or there shall appear to be any neglect or default in the working or managing of the same works to the best advantage, according to the covenants and provisions herein contained, after notice thereof given by the said (*grantor*), his heirs or assigns, or his or their toller or agent, to the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, or to the purser, agent, manager, or principal captain, upon the said mine, or left upon the same, together with an account of the repairs and amendments or alterations necessary or further to be done or made in or in respect of the said mine and works, they the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, shall and will, three calendar months next after any such notice shall have been delivered to or left as aforesaid, repair and amend and put all and every the same mine, works and premises, in good and proper order, repair, and condition, and in strict accordance with the covenants and provisions herein contained.

To permit
grantor to view
the condition of
the mine, and
to repair upon
notice.

10. AND ALSO shall and will, whenever called upon for that purpose by the said (*grantor*), his heirs or assigns, furnish a perfect

To furnish a
list of the
names of the
adventurers.

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list of the names, places of abode, and additions, shares and interest of all and every person or persons who may have been, or for the time being shall be, an adventurer or adventurers in the said mine or undertaking. (i)

Proviso for
avoiding the
sett in case of
nonpayment of
dues, or breach
of covenant.

11. PROVIDED ALWAYS, AND IT IS HEREBY AGREED AND DECLARED, that if the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, shall at any time hereafter during the said term, fail, neglect, or refuse to pay and deliver, or cause to be paid and delivered unto the said (*grantor*), his heirs or assigns, the said hereby reserved part or share, or dish of all tin, tin ore, copper, copper ore, lead, lead ore, and all other ores, metals and minerals raised or gotten within the limits of the sett hereby granted, in manner, and at the several times hereinbefore mentioned, according to the true intent and meaning of these presents, or shall fail in the observance or performance of all, any, or either of the covenants and agreements hereinbefore on their or either of their parts contained, THEN, and in either of these cases, and thenceforth, or at any time thereafter, although no advantage shall have been taken of a previous default, it shall be lawful for the said (*grantor*), his heirs or assigns, by any deed or deeds, instrument or instruments in writing, to revoke, countermand and determine the several liberties, licences, powers and authorities hereby granted, and immediately after any such deed or deeds, instrument or instruments, shall have been delivered to, or left for, the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, or the purser, manager, or principal captain for the time being of the said mine intended to be carried on by virtue of these presents, at their or either of their last or usual known place or places of abode or business in England, or at the counting-house or other public place of business on the said mine, this present indenture, and the liberties, licence, powers and authorities hereby granted, and every article, clause, matter and thing herein contained, shall cease, determine and be void, save and except for the purpose of enforcing any right of

Practical
suggestions.

(i) A more extended form, if required, will be found *infra*, No. IV., clause 16.

action, or any other remedy which shall have accrued to the said (*grantor*), his heirs or assigns, at or before the determination of the said term, for or in respect of the breach of any or either of the covenants and agreements herein contained.

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12. And the said (*grantor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*grantees*), and with each and every of them, their and each and every of their executors, administrators and assigns, that they the said (*grantees*), their partners, co-adventurers, executors, administrators and assigns, well and truly observing, rendering, paying and performing all and singular the rents, dues, payments, covenants, agreements, provisoes and conditions, herein reserved and contained, on their parts to be paid, observed and performed, shall and may peaceably and quietly have, use and enjoy all and singular the liberties, licences, powers and authorities hereby given during the said term hereby granted, without let, eviction, hindrance, interruption or disturbance, of or by the said (*grantor*), his heirs or assigns, or any other person or persons whomsoever rightfully claiming under him or them.

Covenant from
grantor for
peaceable
enjoyment.

IN WITNESS, &c.

No. III.

GRANT OF A SETT TO SEARCH FOR MINERALS FOR A TERM OF SIXTEEN YEARS, IN CONSIDERATION OF THE SURRENDER OF A FORMER SETT, THE DUES RESERVED BY THE PRESENT GRANT BEING A MONEY PAYMENT, UNTIL THE GRANTOR SHALL GIVE NOTICE TO RECEIVE THE DUES IN KIND; THE GRANTOR RESERVING A RIGHT TO DRIVE ADITS, &c., WITHIN THE LIMITS OF THE SETT, BUT SO AS NOT TO INTERFERE WITH THE DUE ENJOYMENT THEREOF BY THE GRANTEES; WITH A PROVISIO THAT IN CASE ANY TIN SHALL BE RAISED, ONE-THIRTIETH PART ONLY OF SUCH TIN IS TO BE RENDERED, IN LIEU OF THE ONE-FIFTEENTH PART PREVIOUSLY RESERVED. VARIATION, WHERE THE GRANTOR IS TO HAVE THE OPTION OF PURCHASING THE MACHINERY.

- | | |
|---|--|
| 1. Parties. | 11. To discharge all taxes and other impositions. |
| 2. Testatum, | 12. To work the mine in an effectual manner. |
| 3. Reservation of quarries, and of the right to drive adits, &c. | 13. To pay for all enclosed land broken up. |
| 4. Habendum. | 14. To collar all shafts kept open after the expiration of the term. |
| 5. Reddendum, where the render is made in money. | 15. To keep proper books of account. |
| 6. Where the render is made in kind. | 16. Power of distress. |
| 7. Covenant from grantees to prepare ores for sale once at least in every two months, so long as a money-rent shall be payable. | 17. Proviso for avoiding the grant in case of nonpayment of the rents or dues, or nonperformance of the covenants. |
| 8. To make division once in every two months, so long as the render shall be made in kind. | 18. Proviso that in case any tin shall be raised, one thirtieth part only of such tin ore is to be rendered. |
| 9. To give the grantor three clear days' notice of every such division. | |
| 10. To pay the rents or dues. | |

Substituted and additional Clauses.

A. Within one month after notice to work in a minerlike manner, any lode left untried for the space of three calendar months.

B. To yield up such parts of the premises as shall have been left unworked for six calendar months consecutively.

C. Stipulation that all such machinery and materials as the grantor shall desire to purchase shall be left on the premises.

D. To fence off shafts, and keep a safe

passage for man and beast, cattle and carriages.

E. To level embankments, and fill up all pits and shafts not necessary for the working of the mine.

F. Declaration that the price to be paid for the machinery shall be settled by arbitration.

G. That grantor shall not, at the expiration of the term, take possession of materials until such valuation shall be made; but if the grantor shall otherwise recover possession of the mine, he shall take possession of such materials and make compensation for the same to the grantees.

1. THIS INDENTURE, made the day of A.D. 18 , Parties.
BETWEEN (*grantor*) of, &c., of the one part, and (*grantees*) of, &c., of
the other part.

2. WITNESSETH, that as well in consideration of the surrender *Testatum.*
of a certain grant or sett, dated on or about the day of in
the year , granted by the said (*grantor*) to the said (*grantees*),
their executors, administrators and assigns, of licence to work
and search for mines, metals, ores and metallic minerals, for a term
of twenty-one years, within the lands hereinafter described, and
also in consideration of the rents, payments and dues hereby
reserved, and of the covenants conditions and agreements herein-
after contained on the part of the said (*grantees*), HE the said
(*grantor*), DOTII by these presents give and grant unto the said
(*grantees*), their partners, co-adventurers, executors, administrators
and assigns, full and free liberty, licence, power and authority to
dig, work, mine, and search for tin, tin ore, copper, copper ore, lead,
lead ore, and all other ores, metals, and metallic minerals in, under
and throughout ALL [*DESCRIBE parcels to be comprised within the
limits of the sett*]; and the ores, metals and metallic minerals there
found, to raise and bring to grass, and there to stamp, spall, pick,
dress, cleanse, and make merchantable and fit for sale, and the
same to take, carry away, convert and dispose of to their own use,
and at their own will and pleasure (subject to the reservations

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hereinafter contained), and within the lands wherein liberty and licence to work and mine is mentioned to be hereby granted, to dig, work, and make such adits, pits, shafts, drifts, leats and watercourses, and to erect such sheds, engines, and other buildings as they the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, shall consider necessary or convenient for the more effectual exercise of the liberty, licence, powers, and authorities hereby granted.

Reservation to
the grantor of
all quarries, and
of the right to
drive adits, &c.,
within the
limits of the
sett.

3. EXCEPTING NEVERTHELESS, AND ALWAYS RESERVING unto the said (*grantor*), his heirs and assigns, all quarries and pits of stone, clay, marle and gravel, with full and free power and authority to enter on the limits aforesaid for the purpose of working such quarry or quarries; AND ALSO EXCEPTING unto the said (*grantor*), his heirs and assigns, and their lessees or grantees, workmen or agents, free liberty, at any time or times during the said term hereby granted, to make or drive, from any part of the land or ground wherein liberty to work and mine is mentioned to be hereby granted, at or above the deepest adit therein, any adit or drift with necessary shafts into any other lands whatsoever, and to keep open and repair the same adits or drifts and shafts, and the like liberty to bring, convey, and make any leats, waters, watercourses and channels, into, from or over the said lands within which liberty and licence to work and mine is mentioned to be hereby granted, into and from any other lands whatsoever; but so nevertheless as not to impede or obstruct the exercise or enjoyment of the liberty, licence, powers or authorities hereby granted.

Habendum.

4. TO HAVE, HOLD, USE, EXERCISE AND ENJOY the said liberty, licence, powers and authorities hereby granted (excepting and reserving as aforesaid), unto the said (*grantees*), their executors, administrators and assigns, from the day next before the day of the date of these presents for and during the term of sixteen years thence next ensuing.

Reddendum,
where the
render is
made in money.

5. THEY, the said (*grantees*), their executors, administrators or assigns, YIELDING AND PAYING, therefore, unto the said

(*grantor*), his heirs and assigns, the rents and sums of money following: (that is to say,) such sum or sums of money as shall be equal to one-fifteenth part of all and every such sum and sums of money as the copper and copper ore, to be raised and gotten as aforesaid, shall actually produce by public sale or sales, to be had in the usual manner for the time being of publicly selling copper ores in the county of Cornwall; and as the said tin, tin ore, lead, lead ore, and other metals and minerals shall actually produce, either by public or private sale, without any deduction or abatement whatsoever (except the deductions of the reasonable costs and charges of the carriage of such ores, metals and minerals, after the same shall be made merchantable, and before the sale thereof), at the end of two months after every such sale as aforesaid.

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6. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED AND AGREED, by and between the said parties hereto, that if the said (*grantor*), his heirs or assigns, shall at any time or times during the said term hereby granted, desire to have one-fifteenth part or share, or dish of the ores, metals and minerals which shall or may be raised and gotten as aforesaid in kind, in lieu of the said hereinbefore mentioned rents and sums of money, and of such his or their desire shall give notice in writing under his or their hands, or under the hands of his or their steward, agent, or toller for the time being to the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, or to the purser, manager, or principal captain for the time being, or at the counting-house or some other public part of the mine or mines to be wrought or carried on within the aforesaid lands comprised within the limits of the sett hereby granted, THEN, and in every such case, and from thenceforth from and after the expiration of two calendar months from the giving or delivery of such notice, and until two calendar months after the same shall from time to time be revoked or countermanded by the said (*grantor*), his heirs or assigns (which he or they are hereby expressly authorized and empowered to do, by notice to be given or delivered as aforesaid), THEN, YIELDING AND PAYING, LAYING OUT AND DELIVERING, unto and for the use of the said (*grantor*), his heirs and assigns one-fifteenth part, share, or dish of all ores, metals and minerals

Reddendum,
where the
render is to be
made in kind.

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which shall or may be raised or gotten within the said lands wherein liberty and licence to work and mine is hereby granted; such ores, metals and minerals having been first well and sufficiently spalled, tried, picked, washed, stamped and dressed, or otherwise, according to the respective natures thereof, made merchantable and fit to be smelted, and fairly divided and laid out upon the grass, at the costs and charges of the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns.

Covenant from
grantees to
prepare ores for
sale once at
least in every
two months, so
long as a money
rent shall be
payable.

7. AND the said (*grantees*), jointly and severally, and for their several and respective heirs, executors and administrators, do, and each and every of them hereby doth, covenant, promise and agree, with and to the said (*grantor*), his heirs and assigns, in manner following: (that is to say,) that they the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, shall and will during the said term hereby granted, at their own expense and with all reasonable expedition, well and truly spall, dress, and render fit for sale all such ores, metals and minerals as shall during the said term be dug, raised and gotten within the limits of the sett hereby granted, so often and so long as the said rent and sums of money hereby reserved shall be payable, at least once in every two months, and sell or cause to be sold the said copper and copper ore by public sale or sales in the usual manner in which copper or copper ore shall for the time being be sold in the said county of Cornwall, and for the best price or prices in money that can reasonably be obtained for the same, and sell or cause to be sold the said tin, tin ore, and other metals and minerals, either by public sale or private contract, or partly by public sale and partly by private contract, as the said (*grantees*) their partners, co-adventurers, executors, administrators or assigns shall think fit, for the best price or prices in money that can reasonably be obtained for the same.

To make
division of the
ores once in
every two
months, so long
as the render
shall be made
in kind.

9. AND ALSO shall and will from time to time during the said term hereby granted, whilst the said hereby reserved part of one-fifteenth shall be paid in kind, at least once in every two months, make a fair division of the said ores, metals and minerals on the grass, the same having been so rendered fit for sale as aforesaid.

9. AND ALSO shall and will give unto the said (*grantor*), his heirs or assigns, or his or their agent, steward or toller for the time being, full three clear days' notice in writing of every such division.

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10. AND ALSO shall and will during the said term hereby granted, well and truly pay or cause to be paid unto the said (*grantor*), his heirs or assigns, the aforesaid rents and sums of money hereby reserved, or the said one-fifteenth part or share or dish of the said ores, metals and minerals, as the same shall for the time being be respectively payable, according to the reservations hereinbefore contained, at the times and in manner hereinbefore appointed for payment thereof, without any deduction or abatement whatsoever.

*To give the
grantor three
clear days'
notice of every
such division.*

*To pay the rents
or dues.*

11. AND ALSO shall and will pay and discharge all taxes, charges and impositions whatsoever, which shall at any time during the said term hereby granted, be taxed, charged, assessed or imposed upon or in respect of the said ores, metals and minerals, or on the said rents and sums of money hereby reserved, or the said part or share or dish hereby reserved, or upon the said (*grantor*), his heirs or assigns, for or in respect thereof (except the present or any future tax on property or income.)

*To discharge all
taxes and other
impositions.*

12. AND ALSO shall and will, at all times during the said term, employ a proper number of good and skilful miners, workmen, servants and labourers, and also horses, cattle, carts, carriages, engines, machinery, utensils, tools, and other articles requisite for the carrying on and working the said mine, within the limits aforesaid, in a good and miner-like manner, and regularly and uninterruptedly continue so to work the same throughout the said term hereby granted, (a) and in so doing shall do no other

*To work the
mine in an
effectual
manner.*

(a) To the above clause the following are sometimes superadded :—

A. "AND ALSO shall and will, within one calendar month after notice thereof given by the said (*grantor*), his heirs or assigns, or his or their toller or agent, to try and work with a sufficient

*Within one
month after
notice to work
in a minerlike*

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To pay for all
enclosed land
broken up, &c.

injury or damage to the surface of the land than such as shall be absolutely necessary and unavoidable. [INSERT *clause to maintain buildings, embankments, &c., to keep open adits, shafts, &c., and to leave the same in good repair at the end of the term, as in last precedent, clause 8, p. 582.*] (b)

13. AND ALSO shall and will pay or cause to be paid unto the said (*grantor*), his heirs or assigns, for all enclosed lands, the surface of which shall be broken, damaged, or permanently destroyed by being taken or used for the purposes of the said mine, or of the exercise of all or any of the liberties, licences, powers and authorities hereby granted, or any of them, at the rate of one

manner, any
lode left untried
for the space of
three calendar
months.

number of men, and in a miner-like manner, any lode or lodes, vein or veins of ore within the limits aforesaid, which shall have been left unworked or untried for the space of three calendar months prior to such notice."

To yield up
such parts of
the premises as
shall have been
left unworked
for six calendar
months
consecutively.

B. "AND ALSO shall and will, at their own costs and charges (on being called on by the said (*grantor*) so to do), surrender and yield up unto the said (*grantor*), his heirs or assigns, all such parts of the premises comprised within the limits of the sett hereby granted as shall be left unworked for six calendar months consecutively, PROVIDED the same ground could at such time be tried and worked, or the mines and works thereon be prosecuted, according to the accustomed and approved rules of mining."

(b) If it is intended that the grantors are to have the option of purchasing the machinery, then add at the end of clause—

Stipulation that
all such
machinery and
materials as the
grantor shall
desire to
purchase shall
be left on the
premises.

C. "Together with all such sheds, and such parts of the engines, whims, pumps, and other machinery and materials thereto belonging, as the said (*grantor*), his heirs or assigns shall, by any writing or writing under his or their hand or hands, declare his or their desire or intention to have; subject nevertheless to the price or sum to be paid for the same at the time hereinafter mentioned."

hundred pounds for every statute acre, and after that rate for any quantity of more or less than an acre; [PROVIDED ALWAYS, that if any part of the said land shall be required, taken or used by the said (*grantees*) their partners, co-adventurers, executors, administrators or assigns, for the purpose of making any permanent shaft or pit therein, or otherwise breaking or opening the surface thereof, THEN and in such case, no part less than one-eighth of an acre shall be considered as taken or used for such purpose, and the full sum of 12*l.* 10*s.* shall be paid for the same.] AND ALSO shall and will from time to time, and at all times during the said term, make reasonable compensation to the tenant or tenants for the time being in possession of the said lands within the limits aforesaid, or any part thereof, for all injury or damage which may be thereby done to the grass, hay, corn, or other crops for the time being, growing and being on the said lands, which the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, shall use, occupy, take possession of, or in any way damage, injure or destroy, in addition to the compensation to be made to the said (*grantor*), his heirs or assigns; the amount to be paid for such compensation to be determined by the award of two referees or their umpire in the usual manner, which award shall or may be made a rule of Her Majesty's Court of Queen's Bench at Westminster. (*c*)

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(*c*) If it is intended that the grantees are to fence off the shafts, &c., so as to prevent accidents, and to keep a safe passage for cattle and carriages, the following clause should be inserted:—

D. "AND ALSO shall and will, at all times during the said term, at their own expense, make sufficient fences for the protection of man and beast around every shaft or open part of any adit which shall be dug or sunk within the limits of the sett hereby granted during the said term, and erect and keep proper gates and fences for protecting the tenants and occupiers of the said lands for the time being from any trespass which by reason or means, or in consequence of any act, matter or thing, done or occasioned by the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, or any or either of them, or under their or any or either of their authorities or authority, and

To fence off
shafts, and to
keep a safe
passage for man
and beast,
cattle and
carriages.

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To sollar all
shafts kept
open at the
expiration of
the term.

That proper
books of account
be kept.

14. AND ALSO shall and will, within three calendar months after the expiration or sooner determination of the said term, well and effectually and in a miner-like manner, at the costs of the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, sollar all such shafts as ought to be kept open in pursuance of the covenants hereinbefore contained, to the depth of at least six feet below the level of the then deepest adit communicating therewith.

15. AND ALSO shall and will, at all times during the said term hereby granted, cause true and faithful accounts to be entered in a book or books to be kept for that purpose in the account-house, or some other convenient place within the lands wherein liberty and licence to work and mine is hereby granted, of all the ores, metals, and metallic minerals that shall be raised or gotten within the same lands during the said term, and of all sales thereof, and of the name or names of the person or persons to whom the same shall be sold, and the price or prices which shall be paid for the same, and all matters and things relating to or concerning the

make and keep in proper repair bridges and passes for the safe and convenient passage of the cattle and carriages of the occupiers for the time being of the said lands or any part thereof, over any leat or watercourse, or open part of any adit or adits, which shall be made during the said term within the limits of the said sett.”*

* If the *grantees* are to fill up pits, shafts, &c., not required for the purpose of working the mine, insert the following clause:—

To level
embankments,
and fill up all
pits and shafts
not necessary
for the working
of the mine.

E. “AND ALSO shall and will from time to time, and at all times during the said term, as soon as conveniently can be done, in the most proper and effectual manner, level and fill in all such embankments, pits, shafts, leats and channels to be made or sunk by the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, within the limits of the sett hereby granted, as shall not be necessary to be kept open and supported for the purpose of working the said mine intended to be carried on by virtue of these presents.”

working of the said mine, and shall and will at all times permit and suffer the said (*grantor*), his heirs and assigns, or his or their steward, agent, or toller for the time being, to inspect and examine the same accounts, and to take extracts and copies therefrom. [INSERT clause authorizing grantor to view the condition of the mine, and to repair upon notice, as in last precedent, clause 9, p. 582.]

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and Minerals
for a Term of
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the Surrender
of a former
Sett.*

16. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED AND AGREED, by and between the said parties hereto, that if, whilst the said hereby reserved rents and sums of money shall be payable, such rents or sums of money shall at any time or times be behind and unpaid for the space of ten days or more next after any of the several days hereinbefore appointed for the payment thereof as aforesaid, or, in case whilst the said reserved part or share of one-fifteenth of the said ores, metals and minerals shall be payable in kind, the same part or share shall not be paid in kind, but the said ores, metals and minerals shall be sold and disposed of, or carried off without the said part or share or dish hereby reserved in kind being first paid, or laid out on the grass in the manner hereinbefore appointed for that purpose, THEN, and in either of these cases, and so often as the same respectively shall happen, it shall be lawful for the said (*grantor*), his heirs or assigns, to enter upon the said lands wherein liberty to work and mine is hereby granted, or any work or works to be wrought and carried on therein, or in any parts thereof, and then and there to distrain all or any of the metals, ores, and metallic minerals, effects or articles of consumption, and also the engines, whims and other machinery, waggons, carts, horses, live and dead stock, and all materials, or other chattels or effects of the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, or any of them, then and there being or used or employed in or about the said mine, and to dispose of the distress or distresses then and there found according to law, in like manner as in cases of distress for rent between landlord and tenant, TO THE INTENT that thereby and therewith, or otherwise, the said rents hereby reserved and payable in money and then in arrear and unpaid, and also the value of the part or share, or dish hereby reserved in kind of the ores, metals and minerals which shall be sold and disposed of or carried away without the same part or share being first paid or laid out on the

Power of
distress.

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of a former
Sett.*

Proviso for
avoiding the
grant in case of
nonpayment of
the rents or
dues, or non-
performance of
the covenants.

grass (such value to be ascertained by the price or prices at which the same shall be sold and disposed of, or in any other manner), and all costs and expenses occasioned by the nonpayment aforesaid, and every of them, shall be fully paid and satisfied.

17. PROVIDED ALSO, AND IT IS HEREBY FURTHER DECLARED AND AGREED, by and between the said parties hereto, that if the said rents hereby reserved and made payable in money, or any part thereof, or if all or any part of the said part or share, or dish of the said ores, metals and minerals, renderable in kind, shall not be well and truly paid or laid out and delivered respectively in manner, and at the several times hereinbefore mentioned, according to the true intent and meaning of these presents, or if the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, shall fail in the performance or observance of all, any or either of the covenants and agreements hereinbefore contained, and on their parts to be performed, observed and kept, THEN, and in either of those cases, it shall and may be lawful to and for the said (*grantor*), his heirs or assigns, to give notice in writing under his hand, addressed "To all persons whom it may concern," that he or they intend to avoid and make null these presents, and the grant hereby made, on account of such failure, non-performance, or non-observance (as the case may be), by affixing such notice on the door of the counting-house or office of the mine or mines to be worked within the limits of the sett hereby granted, or on some other conspicuous place within the said limits, and at the expiration of ten days from and after the affixing of such notice, and as often as the same shall happen, and notwithstanding the waiver of any prior forfeiture, it shall and may be lawful for the said (*grantor*), his heirs or assigns (but without prejudice to any right of action or other remedy which may have previously accrued in respect of the breach of any or either of the covenants or agreements herein contained), into and upon the lands hereinbefore described, or into and upon any part thereof in the name of the whole to re-enter, and the same to have again, repossess and enjoy, as if these presents, and the grant or sett herein contained had never been made and executed, and from and after such re-entry these presents, and all grants, setts, liberties, licences, powers and authorities herein contained, shall cease and be utterly

determined, as well in equity as at law, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

18. PROVIDED ALWAYS, AND IT IS HEREBY LASTLY DECLARED AND AGREED, by and between the said parties hereto, and particularly the said (*grantor*) doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree, that in case any tin or tin ore shall, during the continuance of the term hereby granted, be raised or gotten by them the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, within any part of the lands wherein liberty to work and mine is hereby granted, which is subject to legal tin work bounds (the proof of the existence of which tin work bounds it is hereby declared shall be on the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns), he the said (*grantor*), his heirs or assigns, will from time to time, as the same shall happen, accept and take, in lieu and stead, and in full satisfaction of the said hereby reserved rents and sums of money, or the said one-fifteenth part or share, or dish of the said tin and tin ore respectively, such rents and sums of money as shall be equal to one-thirtieth part of the money to arise from the sale of the said tin and tin ore to be so raised and gotten within such legal tin-work bounds as aforesaid; or one-thirtieth part only of such tin and tin ore when the same shall be rendered in kind, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. (*d*)

IN WITNESS, &c.

(*d*) If the machinery of the mine is to be taken by the grantor at valuation, insert the following clause:—

F. "AND IT IS HEREBY ALSO DECLARED AND AGREED, by and between the said parties hereto, that the price or sum to be paid by the said (*grantor*), his heirs or assigns, or either of them, for such (if any) of the sheds, engines, whims, pumps, and other machinery and materials, which, at the end, or sooner determination of the said term, shall belong to the said mine, or be used in carrying on the same, as the said (*grantor*), his heirs or assigns, shall

No. III.

*Grant of
a Sett to Search
for Metals
and Minerals
for a Term of
Years, in
consideration of
the Surrender
of a former
Sett.*

*Proviso, that in
case any tin
shall be raised
one-thirtieth
part only of such
tin ore is to be
rendered.*

*Declaration that
the price to be
paid for the
machinery,
shall be settled
by arbitration.*

No. III.

*Grant of
a Sett to Search
for Metals
and Minerals
for a Term of
Years, in
consideration of
the Surrender
of a former
Sett.*

in the manner hereinafter mentioned declare his or their desire or intention to purchase, and also the time or times when such price or sum shall be paid, shall be referred to two indifferent persons, the one to be named by the said (*grantor*), his heirs or assigns, and the other to be named by the said (*grantees*), their executors, administrators or assigns; and in case such two referees cannot agree, they shall call in an umpire, whose determination shall be final and conclusive on all parties. AND in case either of the said parties hereto shall fail or refuse to appoint a referee on his or their part or parts, after fourteen days' notice in writing from the other of the said parties, requiring him or them to appoint such referee as aforesaid, THEN the determination of the referee appointed by the party giving such notice shall be binding and conclusive on both parties. And the award of the said referee or referees, or of his or their umpire, shall or may be made a rule of Her Majesty's Court of Queen's Bench at Westminster."

That grantor shall not, at the expiration of the term, take possession of materials until such valuation shall be made; but if the grantor shall otherwise recover possession of the mine, he shall take possession of such materials, and make compensation for the same to the grantees.

G. "PROVIDED ALWAYS, AND IT IS HEREBY FURTHER DECLARED AND AGREED, by and between the said parties hereto, that it shall not be lawful for the said (*grantor*), his heirs or assigns, or his or their solicitor, steward or agent, notwithstanding the expiration or other sooner determination of the said term, and although such previous notice as aforesaid shall have been given or delivered of their intention to purchase all or any of the said sheds, engines, machinery and materials on the said mine, in pursuance of the covenant or agreement hereinbefore contained, to take actual possession, or to have the use and benefit of all or any of such sheds, engines, whims, pumps, machinery and materials, so agreed to be taken at such valuation as aforesaid, unless the same sheds, engines, whims, pumps, machinery and materials, shall have been duly valued, and the amount of such valuation shall have been paid or tendered in pursuance of, and according to the terms of the aforesaid reference, and the award or umpirage to be made in pursuance thereof. BUT in case possession of the said mine shall have been otherwise recovered by the said (*grantor*), his heirs or assigns, before the expiration of the said term, THEN, and in such case, it shall be lawful for him or them immediately to take possession of, and use or enjoy all or any of

No III.

the said sheds, engines, whims, pumps, machinery and materials, upon the said mine, or such of them as he or they shall have given notice of his or their intention to purchase as aforesaid, and to do, or cause to be done whatever may, in their or his judgment respectively, be necessary for draining the water from the bottom of the said mine and the due working of the same; subject nevertheless to such compensation to be paid by the said (*grantor*), his heirs or assigns respectively, for the use of the said sheds, engines, whims, pumps, machinery and materials, until the same shall be so valued and paid for, or the value thereof so tendered as aforesaid as such referees, referee or umpire, as aforesaid, shall in manner aforesaid award in that behalf."

*Grant of
a Sett to Search
for Metals
and Minerals
for a Term of
Years, in
consideration of
the Surrender
of a former
Sett.*

No. IV.

GRANT OF A MINING SETT BY TRUSTEES UNDER A WILL FOR A TERM OF TWENTY-ONE YEARS, WITH A RESERVATION OF ONE-TWELFTH OF ALL COPPER, AND ONE-FIFTEENTH OF ALL TIN RAISED ON THE PREMISES TO BE RENDERED IN KIND OR THE VALUE PAID IN MONEY AT THE OPTION OF THE GRANTORS, WITH SPECIAL COVENANTS FROM THE GRANTEES TO RENDER ONCE IN EVERY YEAR, A CORRECT PLAN OF THE WORKINGS OF THE MINE, AND UPON NOTICE TO GIVE A TRUE LIST OF ALL SUCH PERSONS AS ARE OR SHALL HAVE BEEN ADVENTURERS IN THE MINE, AND OF THEIR RESPECTIVE SHARES AND INTERESTS THEREIN.

- | | |
|--|--|
| 1. Parties. | 11. To make division once in every two months, and to give three clear days' notice previously to every sale. |
| 2. Recital of will devising premises to trustees, and empowering them to grant mining setts. | 12. To sell the ores in the usual manner so long as a money payment shall be rendered. |
| 3. Of death of testator and probate of his will. | 13. To deliver the shares of ores, &c. payable in kind, or pay the value, where the render is in money. |
| 4. That lands over which sett is to be granted form portion of the premises comprised in the will. | 14. To render once a year, after notice from the grantors, a correct plan of the workings of the mine. |
| 5. Testatum. | 15. To permit grantors to view the condition of the mine. |
| 6. Authority to erect engines, make adits, construct watercourses, &c. | 16. To deliver a true list of all such persons as shall have been adventurers in the mine, and of their respective shares and interests therein. |
| 7. Habendum. | |
| 8. Reddendum where the render is made in kind. | |
| 9. Where the render is in money. | |
| 10. Covenant from grantees to prepare ores for sale. | |

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,

BETWEEN (*trustees of will*), of, &c., of the one part, (*grantees*), of, &c., of the other part.

No. IV.

Grant of a Mining Sett by Trustees under a Will, with Reservations, Covenants, &c.

2. WHEREAS (*testator*), late of, &c., deceased, by his last will dated the day of , gave, devised and bequeathed unto the said (*trustees*), their heirs, executors, administrators and assigns, all his lands, tenements and hereditaments, in the parish of St. B——, in the county of Cornwall, or elsewhere, upon certain trusts therein mentioned. AND the said testator did thereby declare that his said trustees should be possessed of all mines, minerals and underground profits whatsoever, in, throughout or under the said lands, upon certain trusts therein declared; and did also give to his said trustees full power to grant setts for any time not exceeding twenty-one years, of and in the said lands for the purpose of working for minerals, upon such conditions as other setts are usually granted in the said county of Cornwall; and the said testator also appointed the said (*trustees*), joint executors of his said will.

Recital of will, devising premises to trustees, and empowering them to grant mining setts.

3. AND WHEREAS the said (*testator's name*) departed this life on the day of , without having altered or revoked his said will, which was shortly afterwards duly proved by the said (*trustees*), in the Prerogative Court of the Archbishop of Canterbury.

Of death of testator, and probate of his will.

4. AND WHEREAS the lands and hereditaments over which liberty and licence to work and search for minerals is hereinafter granted, form a portion of the hereditaments and premises comprised in and devised by the said recited will of the said (*testator*), deceased as aforesaid.

That lands over which the sett is to be granted form portion of the premises comprised in the will.

5. NOW THIS INDENTURE WITNESSETH, that in consideration of the payments, reservations and agreements hereinafter contained, on the part of the said (*grantees*), their executors, administrators and assigns to be rendered, paid, observed and performed, THEY the said (*trustees*), in exercise and execution of the trusts and powers limited to them by the said recited will, as far as they lawfully can or may, but not further or otherwise, DO, and each and every of them DOTH, by these presents, give and grant unto

Testatum.

No. IV.
 Grant of a
 Mining Sett by
 Trustees
 under a Will,
 with
 Reservations,
 Covenants, &c.

the said (*grantees*), their executors, administrators and assigns, full and free liberty, licence, power and authority to dig, work, mine, and search for tin, tin ore, copper, copper ore, lead, lead ore, and all other ores, metals and metallic minerals whatsoever, within, under and throughout ALL [DESCRIBE PARCELS *comprised within the limits of the sett*]; and all metals, ores and metallic minerals (except tin and tin ore), which shall or may be found or got within the limits of the sett hereby granted, to bring to grass, and there to spall, dress, cleanse and make merchantable and fit for sale. AND (subject to the reservations and covenants hereinafter contained) to carry away and convert the same to his and their own use; and all tin and tin ores (except tin or tin ores where subject to tin bounds) which shall or may be found or gotten within the same limits, to raise and bring to grass, there to spall and render fit for stamping, and subject as aforesaid, to carry away and convert the same to his and their own use, and at their own will and pleasure.

Authority to
 erect engines,
 make adits,
 construct
 watercourses,
 &c.

6. AND ALSO full and free liberty, licence, power and authority to erect any engine, shed or other buildings, and to dig, cut and make any new or other adits, drifts, shafts, pits, leats or watercourses, as the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns shall think proper or expedient, for the better and more effectually working the mine intended to be carried on within the limits aforesaid, and for preparing and making fit for sale the ores, metals, and metallic minerals respectively to be raised therefrom. [INSERT *reservation by grantors of the right to drive adits, and make watercourses, as in last precedent, clause 3, p. 588.*]

Habendum.

7. TO HAVE, HOLD, USE, EXERCISE AND ENJOY the said liberty, licence, powers and authorities hereby granted (excepting and reserving, and subject as aforesaid) unto the said (*grantees*), their executors, administrators or assigns, from the day next before the day of the date of these presents, for and during and unto the full end and term of twenty-one years thence next ensuing.

Reddendum

8. YIELDING AND PAYING, LAYING OUT AND DELIVERING,

therefore during the said term, unto the said (*trustees*), their heirs and assigns, one full twelfth part of all such metals, ores and metallic minerals as shall be raised or gotten within the limits of the sett hereby granted (all such metals, ores and metallic minerals, except tin and tin ore), being first well and duly spalled, and rendered fit for sale, and also fairly divided and laid out on the grass, at the costs of the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns; AND all such tin and tin ore as aforesaid, being first well and duly spalled and stamped and then rendered fit for the smelting-house, and then fairly divided and laid out on the grass, at the costs of the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, until all costs incurred by the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns in the working of the said grant or sett shall have been fully paid and discharged; AND from and after payment thereof, then YIELDING AND PAYING, LAYING OUT AND DELIVERING, therefore unto the said (*trustees*), their heirs or assigns, one full fifteenth part of all such metals, ores and metallic minerals as last aforesaid, in manner and condition aforesaid, during the residue of the said term.

No. IV.

*Grant of a
Mining Sett by
Trustees
under a Will,
with
Reservations,
Covenants, &c.*

where the
render is made
in kind.

9. PROVIDED ALWAYS, and it is hereby declared and agreed, by and between the said parties hereto, that if the said (*trustees*), their heirs or assigns, shall at any time or times during the said term hereby granted, desire to have the value of the said hereinbefore reserved part or parts respectively of the said metals, ores and metallic minerals, or any of them in money, whether the part or shares to which he or they shall be then entitled be one-twelfth, or one-fifteenth, and of such their desire shall from time to time give or leave notice in writing under their hands or hand, or of his or their respective solicitor, steward or agent for the time being, to or for the said (*grantees*), their executors, administrators or assigns, or to the purser, manager or principal captain for the time being of the said mine, either personally, or by leaving the same for him or them at his or their respective places of abode, or at or upon the account house of the said mine, THEN and in every such case, from and after the expiration of two calendar months after such notice shall be so given or left as aforesaid, and until the same

Where the
render is in
money.

No. IV. shall be countermanded by notice to be given or left as aforesaid, by the said (*trustees*), their heirs or assigns, THEN YIELDING AND PAYING unto the said (*trustees*), their heirs or assigns, in lieu of the said hereinbefore recited part or parts respectively of the said metals, ores and metallic minerals, or such of them in respect of which such notice to pay the value thereof in money shall be given or left as aforesaid, such sum or sums of money as the same reserved part or parts respectively, whether the same shall be one-twelfth, or one-fifteenth, shall actually produce by public or private sale or sales; ALL and every such payment or payments in money to be made at the end of two calendar months after every such sale as aforesaid.

Covenant from grantees to prepare ores for sale.

10. And the said (*grantees*), jointly and severally, and for their several and respective heirs, executors and administrators, do, and each and every of them doth hereby covenant, promise and agree, with and to the said (*trustees*), their heirs and assigns, in manner following (that is to say): that they the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns, shall and will, from time to time and at all times during the said term, at his and their own costs, and with all reasonable expedition, well and truly spall and render fit for sale, all such metals, ores and metallic minerals (except tin and tin ores), and well and duly spall and render fit for stamping all such tin and tin ores as shall be found, dug and raised respectively within and from the said hereditaments and premises hereinbefore described during the said term hereby granted.

To make division of ores once at least in every two months, and to give grantors three clear days' notice previously to every sale.

11. AND ALSO shall and will, at least once in every two calendar months during the said term, whilst and so often as all or any of the said several hereinbefore reserved parts or shares of the said metals, ores and metallic minerals shall be payable in kind, make a fair division on the grass of the same metals, ores and metallic minerals, the same (except tin and tin ores) having been so well and duly spalled and rendered fit for sale as aforesaid, and the tin and tin ores having been so well and duly spalled and rendered fit for stamping, before the removal of any part thereof respectively. AND of each and every such division, and also of every sale which shall be made of any of the said metals, ores and

metallic minerals, other than by public sale in the said county of Cornwall, and shall and will give or leave unto or for the said (*trustees*), their heirs or assigns, or unto or for his or their respective agent for the time being, full three days' notice in writing exclusively.

No. IV.

*Grant of a
Mining Sett by
Trustees
under a Will,
with
Reservations,
Covenants, &c.*

12. AND ALSO shall and will, from time to time, during the said term, whilst and so long as any of the said hereby reserved parts or shares respectively shall be payable in money, sell, or cause to be sold the said copper and copper ores by public sale or sales in the usual manner in which copper and copper ores shall for the time being be sold in the said county of Cornwall, for the best price or prices in money that can reasonably be obtained for the same, and sell or cause to be sold the said other metals, ores, and metallic minerals, either by public sale or by private contract, or partly by public sale and partly by private contract, as the said (*grantees*), their partners, co-adventurers, executors, administrators or assigns shall in their discretion think fit, for the best price in money that can reasonably be obtained for the same.

To sell ores in the usual manner, so long as a money payment shall be rendered.

13. AND ALSO shall and will, during the said term hereby granted, well and truly render and deliver unto the said (*trustees*), their heirs or assigns, the several parts and shares hereinbefore reserved to them respectively, of all the said metals, ores, and metallic minerals, so respectively prepared and divided in such manner as aforesaid, as soon as the same respectively shall have been so divided, OR as to such of the said metals, ores and metallic minerals, in respect of their several and reserved parts or shares of which the said (*trustees*), their heirs or assigns, shall for the time being be entitled to have paid in money, the actual produce of such reserved parts or shares, without any deduction or abatement whatsoever. [INSERT clause that grantees will pay all taxes, &c., as in last precedent, clause 11, p. 591; ALSO to work the mine in a proper and effectual manner; To keep open and support adits, &c., and to leave the same in good repair, ut ante, No. II., clauses 7, 8, pp. 581, 582.]

To deliver the shares of ores, &c., payable in kind, or pay the value where there is a money payment.

14. AND ALSO shall and will, once in every year during the said term, within one calendar month after notice in writing to or

To render once a year, after notice from

No. IV.

*Grant of a
Mining Sett by
Trustees
under a Will,
with
Reservations,
Covenants, &c.*

the grantors, a
correct plan of
the workings
of the mine.

for them the said (*grantees*), their executors, administrators or assigns, or the purser, manager, agent or principal captain for the time being of the said mine, for that purpose given or left as is hereinbefore mentioned, at their own expense provide for and deliver to the said (*trustees*), their heirs or assigns, or such of them as shall require the same, a full and correct plan and section of all mines and works carried on and prosecuted for the time being within the limits of the sett hereby granted, and of all lodes and veins which shall have been discovered therein.

To permit
grantors to view
the condition
of the mine.

15. AND ALSO that it shall be lawful for the said (*trustees*), their heirs and assigns, and their respective solicitor, steward, or agent for the time being, alone, or with any person or persons in his or their company, as often as he or they shall respectively think proper during the said term, to go down into and examine any part or parts of the said mines or working, and for that purpose to use the tackle and other conveniences then and there being. [INSERT HERE *clause that proper accounts shall be entered in books kept for that purpose, ut ante*, No. III, clause 15, p. 594.]

To deliver a
true list of all
such persons
as are or shall
have been
adventurers
in the mine,
and of their
respective
shares and
interests
therein.

16. AND ALSO shall and will, from time to time and at all times during the said term, upon notice in writing in that behalf under the hands of the said (*trustees*), their heirs or assigns, or of their solicitor, steward or agent, being given to the said (*grantees*), their executors, administrators or assigns, or to the purser, manager, agent, or principal captain for the time being of the said mine, or left for him or them, at his or their usual place or places of abode or business, within forty days after such notice shall have been so given or delivered as aforesaid, produce, or cause to be produced unto the said (*trustees*), their heirs or assigns, or to their solicitor, steward or agent, a true and perfect list in writing, under the hand or hands of the said (*grantees*), their executors, administrators or assigns, or of such purser, manager, agent, or principal captain as aforesaid, of all such persons as shall have been adventurers in the same mine during any period or periods of the time between the commencement of the said term or the date of any previous like notice, as the case may happen, and the day of the date of such current notice which shall be specified therein, together with their last known places of abode,

and additions, and also the respective shares and interests held by them respectively, for the time being, in the same mine during the same period or periods of time. [INSERT *power of distress in case reserved rents or dues shall be unpaid, ut ante, No. III., clause 16, p. 595. ALSO proviso for avoiding the sett, in case of nonpayment of the dues, &c., or nonobservance of the covenants, ut ib., clause 17, p. 596.*]

No. IV.

*Grant of a
Mining Sett by
Trustees
under a Will,
with
Reservations,
Covenants, &c.*

IN WITNESS, &c.

No. V.

LEASE OF A COAL MINE FOR A TERM OF FORTY YEARS, WITH USUAL POWERS FOR WORKING THE SAME, RESERVING A NOMINAL SURFACE RENT FOR THE FIRST THREE YEARS OF THE TERM, AND AN AUGMENTED FIXED RENT FOR THE REMAINDER, AND A RESERVATION OF ONE-EIGHTH OF THE GROSS MONEYS FOR WHICH THE COAL SHALL BE SOLD.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum. 3. Habendum for a term of forty years. 4. Reddendum of surface rent. 5. Reddendum of mine rent. 6. Covenant from lessees for payment of rent, mine dues, &c. 7. To carry on workings in a proper manner. 8. In case of dykes found, lessees, upon notice, shall make proper trials. 9. Not to discontinue the working of the mine, unless in the case of inevitable accident. 10. To lay aside the earth and soil raised. 11. To secure and keep open pits and shafts. 12. To keep the mines sufficiently drained and supported. 13. To do no act whereby the mines may be damaged or endangered. 14. To fill up pits and shafts upon notice from lessor. 15. Liberty for lessor to inspect mines. | <ol style="list-style-type: none"> 16. To keep a proper weighing machine, and weigh all the coals raised therein. 17. To keep books of account, and permit lessor to inspect and make extracts therefrom. 18. To leave mines and fixtures in proper repair, together with such moveable machinery as lessor may elect to purchase. 19. Lessor not to be entitled to purchase, unless he shall give one calendar month's previous notice. 20. Proviso for suspension of the rents and dues in case of the stoppage of the workings of the mine. 21. Proviso that if the stoppage of the working is caused by the default of the lessees, the rents shall still continue payable. 22. Proviso authorizing lessees to determine the term in case the mines should turn out unprofitable. 23. Proviso for re-entry for non-payment of rent or breach of covenant. 24. Covenant from lessor that he has good right to demise. |
|---|---|

25. For peaceable enjoyment and freedom from incumbrances.

26. For further assurance.

27. Arbitration clause.

Substituted Clauses.

A. Liberty to raise clay for the purpose of making bricks for buildings connected with the mines.

B. Power to raise clay for the manufacture of bricks and tiles.

C. Authority to raise and burn limestone.

D. To make coke.

E. Exception of other mines.

F. Proviso for determining the term at the expiration of the first ten, fifteen, twenty, twenty-five, or thirty years thereof.

G. To grant a further term.

1. THIS INDENTURE, made the day of A.D. 18 , Parties.
BETWEEN (*lessor*), of, &c., of the one part, and (*lessees*), of, &c. of
the other part.

2. WITNESSETH, that in consideration of the rents and cove- Testatum.
nants, conditions, provisos and agreements, hereinafter contained
on the part of the said (*lessees*), their executors, administrators
and assigns, to be paid, observed and performed, the said (*lessor*)
DOETH by the presents grant and demise unto the said (*lessees*),
their executors, administrators, and assigns, ALL that piece or
parcel of land, situate, &c. [CONTINUE description of parcels], all
which said premises are particularly delineated and set forth in
the margin of these presents; AND ALSO ALL and every the
mines, depths, seam, or strata of coal now open, or which shall
or may be opened during the said term hereby granted, within
and under the said demised premises; AND ALSO all ways, water-
courses, privileges, advantages, and appurtenances to the said
premises, piece of land, and mines belonging, or now used, held,
occupied and enjoyed therewith; TOGETHER with full and free
liberty, licence, power and authority for the said (*lessees*), their
partners, co-adventurers, executors, administrators or assigns,
during the said term, to search for and work the said mines
and premises, and to carry away and dispose of all the coals
which may be so found and produced, at their own will and
pleasure, and for the purposes aforesaid, to dig, bore, delve, drive,
make, repair, and use all such pits, shafts, levels, pumps, and
drive such levels, headways, and erect such steam engines,
whinseys, cranks, gins, and other machinery, and all such other

No. V. works as may be found necessary or expedient for effectually working the said mine, and for draining and discharging the water therefrom in the best and most efficient manner; and to place, stack up, and lay such coal, and the earth and rubbish to be raised out of the said mines, upon some part of the said demised lands, and to erect and set up, take down and remove, the steam and other engines, whimseys, cranks, gins, and other machinery so erected for the purposes aforesaid, and to do all other necessary things which shall from time to time be deemed necessary or expedient for the more effectually working and getting the said coal; AND ALSO to carry away and convert to their own use all such coal as shall be found or gotten from the said pits and mines; AND ALSO to construct such railways, tramroads, carriage or other ways or roads, in, through, or over the said lands hereby demised, to or from any convenient places of delivery, for any purposes connected with the enjoyment of the said mine, and the sale and delivery of the produce thereof; AND ALSO to construct all such watercourses, air-gates or passages which may be deemed proper for supplying the said mines with pure air, and freeing the same from unwholesome air, or from water; (a) and generally to do all other necessary acts and things for effectually working the said mines and disposing of the produce thereof. (b)

(a) Sometimes a power is given to raise clay to make bricks for the purpose of the mines, for which the following clause will be adapted:—

Liberty to raise clay for the purpose of making bricks for buildings connected with the mines.

A. “AND ALSO with full liberty, licence, power and authority, to raise any clay or any other mineral substance, in any part of the said demised premises, for the purpose of erecting or constructing any buildings, railways, engines, machinery, or other conveniences for the prosecution of the works of the said mines, and to appropriate the said clay or other mineral substance accordingly.”

(b) If the lessees are to be empowered to sell the bricks, then add to the above clause:

Power to raise clay for the manufacture of bricks and tiles.

B. “AND ALSO in like manner, but subject to the restrictions hereinafter contained, to raise the said clay, or other mineral substance, and therewith manufacture bricks or tiles for sale, and to sell and dispose of the same accordingly; but so nevertheless and

3. TO HAVE AND TO HOLD the said seams or strata of coal, and all and singular other the premises hereby demised, unto the said (*lessees*), their executors, administrators and assigns, from the day next before the date of these presents, for and during the full term of forty years thenceforth next ensuing, determinable nevertheless as hereinafter mentioned.

No. V.

Lease of a Coal Mine for a Term of Years, with usual Powers for working the same, &c.

Habendum for a term of forty years.

in such manner, that the said (*lessees*), their executors, administrators or assigns, shall not get or raise for either of the purposes aforesaid, any greater quantity of clay or other mineral substance for the manufacture of such bricks or tiles as hereinbefore mentioned, that shall be raised from (*set out quantity of ground*) of land at the utmost, and which is to consist of one entire piece of land; but which said piece of land not exceeding the limits aforesaid, it shall be lawful for the said (*lessees*), their executors, administrators or assigns, to select from such portion of the said hereby demised premises as they in their discretion may think proper."

If the (*lessees*) are to be authorized to dig and sell limestone, then insert:—

C. "AND ALSO in like manner, but subject to the restrictions hereinafter mentioned, to raise and burn limestone from and upon the said hereby demised premises for the purposes of sale, and to sell and dispose of the same accordingly; but so nevertheless and in such manner as that the said (*lessees*), their executors, administrators or assigns shall not sell or dispose of any greater quantity of limestone than (*set out quantity*) tons weight thereof, beyond the quantity which shall be required for the use and consumption of the colliery works to be carried on upon the said demised premises during the said term hereby granted, in the regular course of similar mining operations."

Authority to raise and burn limestone.

If coke is to be made, add here:—

D. "AND ALSO in like manner to make coke upon the said hereby demised premises, and to erect such buildings, kilns, and machinery as may be necessary for effectually making such coke and rendering it fit for sale, and to sell and dispose of the same accordingly."

To make coke.

No. V.

*Lease of a Coal
Mine for a
Term of Years,
with usual
Powers for
working the
same, &c.*

Reddendum of
surface rent.

4. YIELDING AND PAYING, therefore, yearly and every year during the first three years of the said term determinable as aforesaid, unto the said (*lessor*), his heirs or assigns, the rent of 1s., if the same shall be lawfully demanded; and during the remainder of the said term, determinable as aforesaid, the rent or sum of 100l. sterling, as and for the surface rent of the said premises, free from all taxes and deductions whatsoever.

Reddendum of
mine rent.

5. AND ALSO YIELDING, PAYING AND RENDERING, yearly and every year during the said term, determinable as aforesaid, unto the said (*lessor*), his heirs or assigns, as and for the mine rent of the said demised premises, a rent or sum of money which shall be equal to one eighth part or share of all and every such sum and sums of money (whether in fact such money shall be received or not) as the coals to be raised or gotten as aforesaid, shall actually

If ores and other metals are to be excepted, then insert as follows :—

Exception of
other mines.

E. "EXCEPTING, AND ALWAYS RESERVING unto the said (*lessor*), his heirs and assigns, all other mines, ores, and metallic minerals under and throughout the said demised premises, with full power and authority to search for and work the same, and to erect and construct all such works, machinery and other conveniences as may be deemed necessary for effectually raising the ores, metals, and metallic minerals there found, and for dressing and making the same merchantable and fit for sale, and for such purpose to make use of or deepen all or any of the pits or shafts now or hereafter to be made by the said (*lessees*), their executors, administrators or assigns, on the said demised premises, when such pits or shafts shall have been discontinued, and so that the said (*lessor*), his heirs or assigns, shall make due compensation to the said (*lessees*), their executors, administrators or assigns, for all damage or injury occasioned to them in the enjoyment of the said premises, and the liberties and privileges hereby granted by reason of this present exception, and also for any coal which may be left by them for the necessary support of the pits, shafts, or works to be so used by the said (*lessor*), his heirs or assigns, as aforesaid."

produce, at the mouth of the pit or shaft, or elsewhere; the said rents or sums of money hereby reserved to be paid by four equal quarterly payments in each year, determinable as aforesaid, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, without deduction or abatement on any account or pretence whatsoever; and also free from all rates, taxes, assessments or impositions (except the land tax, and the present or any future tax on property or income.) AND ALSO YIELDING, PAYING AND RENDERING a proportionate part of the period (if any) which may happen to elapse between any one of the said quarterly days of payment and the period of the determination of the said term, in case the same shall happen to determine under the proviso or agreement herein-after contained; such proportionate rent to be payable immediately upon such determination.

No. V.

*Lease of a Coal
Mine for a
Term of Years,
with usual
Powers for
working the
same, &c.*

6. AND the said (*lessees*), jointly and severally, and for their several and respective heirs, executors and administrators, do, and each and every of them doth, hereby covenant with the said (*lessor*), his heirs and assigns, in manner following; (that is to say,) that they the said (*lessees*), or some or one of them, their or some or one of their executors, administrators or assigns, shall and will, during the said term hereby granted, determinable as aforesaid, pay unto the said (*lessor*), his heirs or assigns, the said surface rent, mine rent, and all and singular other the rents and sums of money, and proportionate part thereof, according to the reservations thereof hereinbefore respectively contained, at the times and in manner hereinbefore appointed for payment thereof, according to the true intent and meaning of these presents, without any deduction or abatement on any account or pretence whatsoever (except the land tax, or the present or any future tax on property or income.) [INSERT covenant for payment of taxes, *ut ante*, No. IIL, clause 11, p. 591.]

Covenant from
lessees for pay-
ment of rent,
mine dues, &c.

7. AND ALSO shall and will, at all times during the said term, work and carry on the mines in a good, proper, and mining-like manner, and regularly and uninterruptedly continue to work the same, according to the most approved practice adopted in the winning and working of coal mines, and without any unnecessary

To carry on
workings in
a proper
manner.

No. V.

*Lease of a Coal
Mine for a
Term of Years,
with usual
Powers for
working the
same, &c.*

In case of
dykes found,
lessees, upon
notice, shall
make proper
trials.

waste, and in so doing shall do no other injury or damage to the surface of the land than such as shall be absolutely necessary and unavoidable. (c)

8. AND ALSO shall and will, in case any faults or dykes shall at any time be discovered in the said mines, whenever thereunto requested by the said (*lessor*), his heirs or assigns, or his or their agent or agents, by notice in writing, make proper trials in or through such faults or dykes, for the purpose of discovering whether the seam or strata so interrupted and in work for the time being is workable beyond such faults or dykes; and if such seam or stratum be found workable, shall and will continue the working thereof.

Not to
discontinue the
working of the
mine, unless
in the case of
inevitable
accident.

9. AND ALSO shall not nor will, at any one time during the said term hereby granted, discontinue the workings of the said mines for a longer time than three calendar months, unless prevented by inevitable accident, and in the latter case, will use their utmost endeavours to remedy the effects of such accident, so that the working of the said mines so discontinued in consequence may be resumed as speedily as circumstances will permit.

To lay aside the
earth and soil
raised.

10. AND ALSO shall and will cause to be laid aside in heaps, all the earth and soil which shall be raised and dug up in working the said mines.

To secure and
keep open pits
and shafts.

11. AND ALSO shall and will secure, keep open, and support with timber and other proper materials, all pits and shafts now sunk or made, or at any time or times hereafter to be sunk or made, in the said demised premises; and effectually fence off such pits and shafts, so as to afford a safe protection to man and beast.

To keep the
mines
sufficiently

12. AND ALSO shall and will, from time to time and at all times during the said term, by proper levels, to be worked or

(c) If compensation is to be made for surface damage, insert here, clause 13, No. III., p. 592.

driven to or from the said mines, and all proper and effectual ways and means, keep the said mines well and sufficiently drained; also with sufficient pillars of coal, brick, or stone arching, or with strong timber, or other proper and effectual means, support and secure the said mines, and the way-gates, water-gates and passages thereof.

No. V.

Lease of a Coal Mine for a Term of Years, with usual Powers for working the same, &c.

drained and supported.

13. AND ALSO shall not nor will commit, omit, or neglect any act, matter or thing, whereby, or by reason or means whereof, the said mines or works shall or may be damaged or endangered.

To do no act whereby the mines may be damaged or endangered.

14. AND ALSO shall and will, from time to time during the said term, upon the request in writing of the said (*lessor*), his heirs or assigns, or his or their agent or agents, but not otherwise, as soon as conveniently can be done, and in the most proper and effectual manner, fill up and level any pit or shaft now or hereafter to be sunk by the said (*lessees*), their executors, administrators or assigns, in the said demised premises, as shall be useless or unnecessary for the purpose of working the said mines.

To fill up pits and shafts upon notice from lessor.

15. AND ALSO shall and will, from time to time, and at all seasonable times during the said term, permit and suffer the said (*lessor*), his heirs and assigns, and his and their agents, workmen and servants, to go down into and return from any pits or shafts, now or hereafter to be sunk in the said demised premises, in order to inspect and examine the said mines; AND for that purpose to make use of all the machinery and works employed in the said mines for those purposes.

Liberty for lessor to inspect mines.

16. AND ALSO shall and will, during the said term, erect and maintain upon some convenient part of the said demised premises, a weighing machine or machines of the most approved construction, for showing the weight of 120 lbs. weight to every hundredweight, and twenty-one of such hundredweights to each and every ton weight, for the purpose of weighing the coals which shall from time to time be raised or gotten from the said demised premises; AND ALSO shall and will cause all coal so raised or gotten as afore-said, to be weighed in such machine or machines as soon as the same shall be raised and produced, and before the sale or removal

To keep a proper weighing machine, and weigh all the coals raised therein.

No. V.

*Lease of a Coal
Mine for a
Term of Years,
with usual
Powers for
working the
same, &c.*

To keep books
of account and
permit lessor to
inspect and
make extracts
therefrom.

thereof, or of any part thereof, from off the said demised premises.

AND shall also permit and suffer the said (*lessor*), his heirs or assigns, or his or their agent or agents for the time being, to be present at the time of weighing such coal.

17. AND ALSO shall and will, at all times during the said term, keep true and faithful accounts entered in regular books kept for that purpose, on some convenient part of the said demised premises, of all coal which shall from time to time be raised from out of the said mines, and of all sales thereof, and of the name of the person or persons to whom the same shall be sold, and the price or prices which shall be paid for the same; and of all other matters and things whatsoever relating to or concerning the workings of the said mines; AND ALSO shall and will permit the said (*lessor*), his heirs or assigns, or his or their agent or agents for the time being, at all seasonable times, to inspect and examine the said books of account, and to take extracts or copies therefrom.

To leave mines
and fixtures in
proper repair,
together with
such moveable
machinery as
the lessor may
elect to
purchase.

18. AND ALSO shall and will, at the expiration or sooner determination of the said term, peaceably and quietly leave and yield up unto the said (*lessor*), his heirs or assigns, in good repair, order and condition, and fit for future working, the said mines, seams, or strata of coal, and all buildings, erections, pits, shafts, levels, sumps, watercourses, ways and way-gates employed in or about the said mines, together with all the moveable machinery, engines and other articles which the said (*lessor*), his heirs or assigns, shall elect to purchase at a price to be determined in case of disagreement in manner hereinafter mentioned.

Lessor not to
be entitled
to purchase,
unless he shall
give one
calendar
month's
previous notice.

19. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that the said (*lessor*), his heirs or assigns, shall not be entitled to avail himself or themselves of his or their election, to purchase the said moveable machinery, engines and other articles, unless he or they, or his or their agent or agents for the time being shall, at least one calendar month previously to the expiration of the said term, give notice in writing to the said (*lessees*), their executors, administrators or assigns, of his or their having made such election to purchase as aforesaid, AND such notice shall also specify and set forth what

portion of the said moveable machinery, engines and other articles are intended to be so purchased; AND in case no such notice or specification shall be so given as aforesaid, it shall be lawful for the said (*lessees*), their executors, administrators or assigns, at any time before the expiration of twelve calendar months after the determination of the said term, either to remove the said moveable machinery, engines and other articles from off the said demised premises, or to sell the same, either thereon or elsewhere, and either by public auction or private contract, to any person or persons whomsoever, or in such other manner as the said (*lessees*), their executors, administrators or assigns, shall think proper.

No. V.

*Lease of a Coal
Mine for a
Term of Years,
with usual
Powers for
working the
same, &c.*

20. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that if at any time during the said term, the working of the said mines shall be wholly or partially stopped, in consequence of any accident by fire, water or any other inevitable cause, without any default on the part of the said (*lessees*), their partners, co-adventurers, executors, administrators or assigns, or other lessees or lessee for the time being of the said demised premises, or their or his agent or agents, workmen or servants, THEN the rents and payments hereinbefore reserved and made payable shall, in case such working shall be entirely stopped, or be wholly suspended during the period of such stoppage; and in case such working shall be partially stopped, then the said rents and payments shall be partially suspended or abated in proportion to the extent of the workings so stopped, and the residue of the said rents and payments shall continue to be rendered, in proportion to the extent to which the workings of the said mine may still continue to be carried on.

*Proviso for
suspension of
the rents and
dues in case of
the stoppage of
the workings
of the mine.*

21. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that if the working of the said mines shall be wholly or partially stopped in consequence of any such neglect or default of the said (*lessees*), their executors, administrators or assigns, or other the lessees or lessee for the time being of the said demised premises, or their or his agent or agents, workmen or servants, THEN the said rents and payments shall continue to be payable in like manner as if no stoppage of the said working had ever taken place.

*Proviso that if
the stoppage of
the working
is caused by
the default
of the lessees,
the rents shall
still continue
payable.*

No. V.

*Lease of a Coal
Mine for a
Term of Years,
with usual
Powers for
working the
same, &c.*

Proviso
authorizing
lessees to
determine the
term in case
the mines
should turn out
unprofitable.

22. PROVIDED ALSO, AND IT IS HEREBY FURTHER DECLARED, that if the said mines hereby demised shall on a fair trial be found incapable of producing to the quantity of tons (to be calculated at twenty-one hundredweight to the ton) in each and every year of the said term, THEN, and in such case, it shall be lawful for the said (*lessees*), their executors, administrators or assigns, on giving six calendar months' previous notice thereof in writing to the said (*lessor*), his heirs or assigns, or leaving the same at his or their last or usual place of abode or business in England, and rendering and paying all arrears of rents and other payments due and payable by virtue of these presents, and observing and performing the covenants, conditions and agreements on their parts contained, at the end of such last-mentioned period to surrender, yield and deliver up all and singular the said demised premises unto the said (*lessor*), his heirs or assigns, and these presents, and every clause, matter and thing herein contained shall cease and be void.(d)

Proviso for
re-entry for
nonpayment of
rent or breach
of covenant.

23. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that if the rents and payments hereinbefore reserved, or any of them, or any part thereof, shall not be paid in manner, and at the several times hereinbefore mentioned for payment thereof, or within the space of forty days next thereafter (being demanded),

(d) The following form is sometimes substituted for the above clause :—

Proviso for
determining the
term at the end
of the first ten,
fifteen, twenty,
twenty-five, or
thirty years
thereof.

F. "PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that in case the said (*lessees*), their executors, administrators or assigns, shall be desirous of putting an end to the term hereby granted at the end of the first ten, fifteen, twenty, twenty-five or thirty years thereof, and shall give to the said (*lessor*), his heirs or assigns, not less than six calendar months' previous notice thereof in writing of their intention to do so, THEN and in such case the demise hereby made shall, at the expiration of the first ten, fifteen, twenty, twenty-five or thirty years of the said term (as the case may be), cease, and become absolutely void."

or if the said (*lessees*), their executors, administrators or assigns, shall fail in the observance or performance of all, any, or either of the covenants, conditions and agreements hereinbefore contained and on their parts to be observed, performed and kept, THEN, and in either of such cases, the said term hereby granted shall cease and be void; AND it shall be lawful for the said (*lessor*), his heirs or assigns, at any time thereafter, to enter upon the said demised premises, and the same to repossess and enjoy, as of his or their original estate, in the same manner as if these presents had never been made and executed, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

No. V.

Lease of a Coal Mine for a Term of Years, with usual Powers for working the same, &c.

24. AND the said (*lessor*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*lessees*), their executors, administrators and assigns, in manner following (that is to say), that (notwithstanding any act done or permitted by him the said (*lessor*), to the contrary) he the said (*lessor*), now hath in himself good right, full power, and lawful and absolute authority to demise the said mines and premises hereby demised, with their appurtenances in manner aforesaid.

Covenant from lessor that he has good right to demise.

25. AND ALSO, that it shall be lawful for the said (*lessees*), their executors, administrators and assigns, paying the rents, and observing and performing the covenants, conditions and agreements, on their parts to be paid, observed and performed, peaceably and quietly to possess and enjoy the said mines and premises hereby demised, with their appurtenances, for the term hereby granted, without let, eviction, interruption or disturbance, of or by the said (*lessor*), his heirs or assigns, or any other person or persons rightfully claiming through, under, or in trust for him or them. AND that freely, clearly, and absolutely indemnified by the said (*lessor*), his heirs, executors or administrators, from all former and other estates, rights, titles, liens, charges and incumbrances whatsoever, created or suffered by the said (*lessor*), his heirs or assigns, or any other person or persons rightfully claiming as aforesaid.

For peaceable enjoyment and freedom from incumbrances.

26. AND MOREOVER, that the said (*lessor*) and all persons whomsoever rightfully claiming any estate or interest in the said

For further assurance.

No. V.
*Lease of a Coal
 Mine for a
 Term of Years,
 with usual
 Powers for
 working the
 same, &c.*

mines and premises hereby demised under or in trust for him, shall and will from time to time and at all times hereafter, at the request and costs of the said (*lessees*), their executors, administrators or assigns, enter into, execute and perfect all such further assurances, for the more perfectly or satisfactorily demising, assuring and confirming the said mines and premises hereby demised, with their appurtenances, unto the said (*lessees*), their executors, administrators and assigns, for all the then unexpired residue of the said term of forty years in manner aforesaid, according to the true intent and meaning of these presents, as the said (*lessees*), their executors, administrators or assigns, or their counsel in the law shall require. (e)

Arbitration
 clause.

27. AND LASTLY, that if at any time during the said term hereby granted, or after the determination thereof, any dispute shall arise between the said (*lessor*), his heirs or assigns, and the said (*lessees*), their executors, administrators or assigns, concerning any of the clauses, covenants, conditions and agreements, provisoes, matters and things herein contained, THEN, and in every such case, such dispute shall be referred to two indifferent persons, the one to be named by the said (*lessor*), his heirs or assigns, and the other to be named by the said (*lessees*), their executors, adminis-

(e) If a further term is to be granted, insert—

To grant a
 further term.

G. "AND ALSO, that the said (*lessor*), his heirs or assigns, shall and will at any time within six calendar months from and after the expiration of the said term hereby granted, at the request and costs of the said (*lessees*), their executors, administrators or assigns, by indorsement on these presents, or by any instrument in writing under their hands, grant all and singular the said premises hereby demised unto (*lessees*), their executors, administrators or assigns, for the further term of forty years, to commence from the day of the expiration of the said term hereby granted, and thenceforth next ensuing, at, under and subject to the like rents, reservations, covenants, conditions, provisoes and agreements, as are hereby reserved, expressed and contained."

trators or assigns;) and in case such two referees cannot agree, they shall call in an umpire, whose determination shall be final and conclusive on all parties. AND the said referees or umpire, as the case may be, shall, if he or they shall think proper, require the parties in difference to enter into and execute such bonds or agreements for submission to the award of the said referees or umpire: and for making such award a rule of court of law or equity; and the said award shall be made a rule of court as soon as conveniently may be after the execution thereof, and shall be binding on all parties; and in case either of the said parties in difference shall fail or refuse to appoint a referee, on his or their part or parts, after fourteen days' notice in writing from the other of the said parties requiring him or them to appoint such referee as aforesaid, THEN the said determination of the referee appointed by the party giving such notice shall be binding on all parties.

No. V.

*Lease of a Coal
Mine for a
Term of Years,
with usual
Powers for
working the
same, &c.*

IN WITNESS, &c.

No. VI.

LEASE OF A LEAD MINE WHERE ALL THE ORE RAISED IS TO
BE SMELTED ON THE PREMISES.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum. 3. Exceptions and reservations. 4. Habendum. 5. Reddendum. 6. Covenant from lessees to work the mine, &c. 7. To make ore fit to be weighed and delivered to lessor. 8. To permit lessor to take an account of, and carry away, his reserved one-fifth part. 9. To give lessor eight days' previous notice of every weighing. 10. To pay rates and taxes. 11. To use best endeavours to discover new veins. 12. To keep 200 miners at least constantly employed. 13. To work the mine in a proper and miner-like manner. 14. That all ores raised shall be smelted on demised premises. 15. To keep levels, shafts, &c., in proper repair. 16. Also mills and other buildings. | <ol style="list-style-type: none"> 17. To wall arch with stone the principal waygates, &c. 18. Power for lessor to enter to inspect the workings of the mines. 19. That lessees will do no damage, and repair upon notice. 20. To deliver up demised premises at the end of term. 21. Lessor to have the use of lessee's iron rails for two years after the end of term. 22. Lessor to have the option of purchasing at the two years' end. 23. If lessor declines to purchase, lessees may remove iron rails on fixing wooden rails in lieu thereof. 24. Power for lessor to purchase miners' or blacksmiths' tools, and in case of his declining to do so, lessees may remove them. 25. Lessees to have the use of mills, &c., for twelve months after the end of term, for the purpose of dressing their ores. 26. Power of distress. 27. Proviso for re-entry in case of breach of covenant. |
|---|---|

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*lessor*), of, &c., of the one part, and (*lessees*), of, &c.,
of the other part.

Testatum.

2. WITNESSETH, that in consideration of the reservations,

covenants, conditions and agreements hereinafter reserved and contained on the part of the said (*lessees*), their executors, administrators and assigns, to be paid, observed and performed, HE, the said (*lessor*), BOTH by these presents grant, demise, and lease unto the said (*lessees*), their executors, administrators and assigns, ALL those mines of lead and lead ore, situate within or under [CONTINUE *description of parcels*]; TOGETHER with the smelt mills called (*name of smelt mills*), and the offices, crushing mills, warehouses, level house, blacksmiths' smithies, and all other erections and buildings standing thereon, connected with the purposes of the said mines; AND ALSO with full liberty, licence, power and authority for the said (*lessees*), their executors, administrators or assigns, agents, workmen and servants, to erect cottages or huts, and to construct engines, cupolas, furnaces, stacks, smelting mills, ore houses, and all other necessary erections, buildings and conveniences, in and upon the premises relating to the said mines; AND ALSO full and free liberty, licence, power and authority to dig and open any pits, shafts, levels and soughs, and to search for, get, take up, work, win, and dig all sorts of lead and lead ore, and all other ores and minerals from which lead is extracted; TOGETHER with the use and enjoyment of all watercourses, leats and drains, now used or enjoyed with the said demised premises, with full, free and absolute, liberty, licence, power and authority to construct any new watercourses, leats or drains, for all necessary uses and purposes connected with the said mines; AND ALSO to construct buddles, for the purpose of washing, picking and dressing the ores to be raised in or upon the said demised premises; and also to carry peats in or upon the same premises. AND ALSO with free liberty of ingress, egress and regress, either with or without horses, carts and carriages, for the purpose of carrying away the ores to be raised from the said mines, and for conveying all necessary materials to and from the same, and all usual rights, liberties and privileges, for the purposes aforesaid, or any of them, as far as the said (*lessor*) is empowered to grant the same. PROVIDED, that the said (*lessor*), his heirs or assigns, or his or their lessees, of any other adjoining mines, be not injured, hindered, or interrupted thereby.

No. VI.

Lease of a Lead Mine where all the Ore raised is to be Smelted on the Premises.

3. EXCEPTING AND ALWAYS RESERVING unto the said (*lessor*),

Exceptions and reservations.

No. VI.
*Lease of a Lead
 Mine where
 all the Ore
 raised is to be
 Smelted on the
 Premises.*

his heirs or assigns, all rights, liberties and privileges, in and upon the said premises hereby demised, to cut and carry away peats, and make roads, watercourses, leats and drains, and to commence or continue any levels, adits or shafts, for the purpose of searching and trying any adjacent mining ground belonging to the said (*lessor*), his heirs or assigns, but so nevertheless that they the said (*lessees*), their executors, administrators or assigns, shall have the use of all such adits, levels and shafts, provided that such use shall not encroach upon the rights, interests, and privileges of the said (*lessor*), his heirs or assigns, or his or their lessees or under-tenants; the said (*lessees*), their executors, administrators or assigns, paying a reasonable compensation to the said (*lessor*), his heirs or assigns, for the use of the said adits, levels and shafts, the amount of which compensation, in case of dispute, shall be determined by the award of two referees or their umpire in manner hereinafter mentioned. AND EXCEPT ALSO unto the said (*lessor*), his heirs or assigns, all necessary liberties, powers and privileges, in, upon, from and out of the said premises hereby demised, for the purpose of working any mines, veins, pipes or flots of lead, or other ores, minerals and fossils belonging to the said (*lessor*), his heirs or assigns, or for the dressing or manufacturing of all the lead ore, minerals and fossils produced from any other part of the lands belonging to the said (*lessor*), his heirs or assigns, not comprised in this present demise, and to get and dig turf, peat and fuel, for any of the purposes aforesaid; so that the powers, liberties and privileges hereby excepted shall not interfere with or injure the said (*lessees*), their executors, administrators and assigns, during the said term hereby granted. AND ALSO EXCEPTING AND ALWAYS RESERVING unto the said (*lessor*), his heirs and assigns, at all times during the said term hereby granted, the use of the hearth and furnaces belonging to the said mines, together with all implements, machinery and fuel used for the purpose of smelting and refining, which may not then be in use by the said (*lessees*), their executors, administrators or assigns, in order to smelt all or any of the duty ores, metals or minerals of him the said (*lessor*), his heirs or assigns, to be raised or gotten from any of the mines or mining grounds of the said (*lessor*), his heirs or assigns, or his or their lessees or under-tenants, or for refining the lead or other mineral substances to be made from such ores, metals or minerals, the said

(*lessor*), his heirs or assigns, or his or their lessees or under-tenants paying or allowing unto the said (*lessees*), their executors, administrators or assigns, compensation for the fuel thereby to be used, the amount of which, in case of dispute, shall be settled by arbitration as hereinafter mentioned.

No. VI.

*Lease of a Lead
Mine where
all the Ore
raised is to be
Smelted on the
Premises.*

4. TO HAVE, HOLD, USE, EXERCISE AND ENJOY the said *Habendum.*
ground, mines, minerals, veins, beds, liberties, privileges, powers, and all and singular other the premises hereby granted and demised, with their appurtenances (except as hereinbefore is excepted), unto the said (*lessees*), their executors, administrators and assigns, from henceforth, for and during the full end and term of twenty-one years.

5. YIELDING AND PAYING therefore yearly and every year *Reddendum.*
during the said term hereby granted, unto the said (*lessor*), his heirs or assigns, one entire fifth part (the whole into five equal parts to be considered as divided) of all such malleable lead; bar and pig, and one-fifth part of all the slag and slaghearth lead; the same to be delivered in the same state as it shall be produced from the hearth or furnace, without having any of the silver extracted therefrom, as shall be smelted, cast, procured, run, and made from the lead ore, and other ores and minerals to be gotten by virtue of the grant or demise hereby made within any part of the said demised premises, free from all charges of working, getting, raising, cleansing, dressing, weighing and carriage to the mill, smelting, reducing, and rendering the same merchantable; and also free from all rates, taxes, assessments or impositions by authority of Parliament or otherwise howsoever; the same one-fifth part of such malleable lead, and slaghearth lead respectively, when so smelted as aforesaid, to be weighed, set out and delivered at the door of the smelting-house or mill where the same shall have been smelted and reduced into malleable and merchantable lead.

6. AND the said (*lessees*), their heirs, executors and adminis- *Covenant from*
trators, DO hereby covenant with the said (*lessor*), his heirs or *lessees to work*
assigns, in manner following (that is to say), that they the said *the mine, &c.*
(*lessees*), their executors, administrators or assigns shall and will

No. VI. from time to time, and at all times during the said term hereby granted, at his or their own costs, dig for, win, get, draw up, dress, wash, cleanse, buddle, smelt, run down, and reduce and make marketable all the lead ore which shall be found and gotten within the said mining ground hereby demised.

Lease of a Lead Mine where all the Ore raised is to be Smelted on the Premises.

To make the ore fit to be weighed and delivered to lessor.

7. AND ALSO shall and will make the same fit to be weighed or set out by and delivered to the agent or steward of the said (*lessor*), his heirs or assigns, at the door of the smelting house, or mill, or other place where the same shall have been smelted, reduced, and run down, washed and dressed as aforesaid, and before the same or any part thereof shall have been conveyed from off the said demised premises.

To permit lessor to take an account of and carry away his reserved one-fifth part.

8. AND ALSO shall and will render, weigh off, yield and pay, and permit and suffer the said (*lessor*), his heirs or assigns, or his or their agent or steward, to take an account of, and weigh, and take, and carry away, in pursuance of the reservation hereinbefore contained, one fifth part, or fifth bag or pig of all the said lead, and of the said slag, and slaghearth lead, so to be smelted, run down, and reduced in a merchantable and saleable condition, for the use of the said (*lessor*), his heirs or assigns: so that at each and every time of weighing and setting out the said lead, the said lessor's one-fifth part, share, or duty, shall be first set out before the residue or lessee's part thereof shall be set out or taken away; the said one-fifth part or share so to be set out and weighed, rendered and delivered to the said (*lessor*), his heirs or assigns, to be free from all charges for working, getting, raising, cleansing, dressing, weighing, and carriage to the mill, smelting, reducing, and rendering the same merchantable; and also free from all rates, taxes, assessments or impositions by authority of Parliament or otherwise howsoever, or any other deductions whatsoever.

To give lessor eight days' previous notice of every weighing.

9. AND ALSO shall and will from time to time, and at all times during the said term hereby granted, give unto the said (*lessor*), his heirs or assigns, or his or their agent or steward, at least eight clear days' previous notice in writing of the day appointed for every such weighing as aforesaid, and for weighing or setting apart the

said one-fifth part or share, in order to ascertain that the same is properly weighed and fairly set out.

No. VI.

Lease of a Lead Mine where all the Ore raised is to be Smelted on the Premises.

10. AND ALSO shall and will from time, to time and at all times during the said term, pay and discharge all rates, taxes, assessments or impositions whatsoever, whether parliamentary or parochial, or otherwise howsoever, which shall be rated, charged, assessed or imposed upon the said demised premises, or upon any buildings erected thereon, or upon or in respect of any lead or lead ore which may be raised or gotten therefrom, or upon the said one-fifth part or share to be rendered as aforesaid, either before or after the same shall have been so rendered.

To pay rates and taxes.

11. AND ALSO shall and will use their best endeavours to discover any new vein or veins of lead and lead ore within the limits of the said hereby demised premises, and if such vein or veins of ore shall, when so found, appear to the said (*lessees*), their executors, administrators or assigns to be worth working, shall and will work and carry on the same in a proper and mining-like manner, according to the best and most approved practice.

To use best endeavours to discover new veins.

12. AND ALSO shall and will at all times during the said term, keep two hundred able working miners at least constantly employed in the working of the said mines, unless prevented by water, stress of weather, or other unavoidable accident or impediment.

To keep 200 miners at least constantly employed.

13. AND ALSO shall and will in all things carry on and work the said mines in a good, proper, and mining-like manner, and regularly and uninterruptedly continue so to do, during the said term, unless prevented by such unavoidable accident or impediment as aforesaid.

To work the mine in a proper and mining-like manner.

14. AND ALSO, that all the lead ore raised or gotten in, from or out of the said mines or any part thereof, shall be cleansed, buddled, washed, dressed, smelted, reduced and made merchantable as aforesaid, as soon as conveniently can be done after such ore shall be so raised and gotten as aforesaid, upon some part of

That all ore raised shall be smelted on demised premises.

No. VI. the said hereby demised premises; AND that the said ore so to be raised and gotten as aforesaid or any part thereof, shall not be removed from off the said premises on any account or pretence whatsoever, before the same shall be so cleansed, buddled, washed, dressed, smelted, reduced and made merchantable as aforesaid, without the previous consent in writing of the said (*lessor*), his heirs or assigns.

Lease of a Lead Mine where all the Ore raised is to be Smelted on the Premises.

15. AND ALSO, that the said (*lessees*), their executors, administrators or assigns shall and will, during the said term, keep open and in good repair all levels, drifts, shafts, sumps and other waygates, roads, bridges and works of every description already open, driven, made and sunk for the purpose of working the mining-ground hereby demised.

Also mills and other buildings.

16. AND ALSO, all mills, erections and other buildings now erected or hereafter to be built on the said demised premises.

To wall and arch with stone the principal waygates, &c.

17. AND ALSO shall and will from time to time, and at all times during the said term, at their own proper charges, wall and arch with stone, in a proper and workmanlike manner, all and every the principal waygates, levels and shafts now open, driven, made or sunk, or any such the said (*lessees*), their executors, administrators or assigns shall or may, at any time during the said term, open, drive, make or sink in or through any part of the said demised premises, when and where the same shall require support, so that the said principal waygates, levels and shafts, may at all times be sufficiently supported with durable stone, and that no part thereof be supported with timber.

Power for lessor to enter to inspect the workings of the mines.

18. AND ALSO, that it shall be lawful for the said (*lessor*), his heirs or assigns, and his and their agent or steward, workmen and servants, from time to time and at all seasonable times during the said term hereby granted, to enter into and upon the said mines, and mining grounds and premises, or any part thereof, and go down, into, or along, and return to and from any pits, shafts, levels or workings now or hereafter to be sunk, driven or opened, in, upon or under the said demised premises or any part thereof, for the purpose of inspecting, viewing, dialling, measuring and

examining the said mines, and the state and condition and manner of working the same; and, for the purposes aforesaid, to have the use of the ropes, turn-trees, horses, waggons and other machinery belonging to the said mines, and every reasonable assistance from the said (*lessees*), their executors, administrators and assigns, and their agents, workmen and servants; and in case of any want of reparation, or improper working or management of the said mines, to give notice thereof in writing to the said (*lessees*), their executors, administrators or assigns, or leave the same upon the said demised premises, and that they the said (*lessees*), their executors, administrators or assigns, shall and will well and sufficiently repair and rectify the same within the space of three calendar months next after such notice shall have been so given or left as aforesaid: or as soon afterwards as the same shall become practicable.

No. VI.

*Lease of a Lead
Mine where
all the Ore
raised is to be
Smelted on the
Premises.*

19. AND ALSO, that the said (*lessees*), their executors, administrators or assigns, shall not do or permit or suffer to be done, any damage to the old inclosed lands adjoining or contiguous to the mining grounds of the said (*lessor*), his heirs or assigns, or to any other of their mines or workings, under or by virtue of these presents; and in case any damage shall be so done, the said (*lessees*), their executors, administrators or assigns, will save harmless and keep indemnified the said (*lessor*), his heirs and assigns, of, from and against all such losses, costs, damages and expenses as may be borne, sustained or incurred, in consequence of such damage as aforesaid.

*That lessees
will do no
damage, and
repair upon
notice.*

20. AND ALSO that the said (*lessees*), their executors, administrators or assigns, shall and will at the expiration or sooner determination of the said term hereby granted, leave and yield up all and every of the said mines, works and premises, and all shafts, drifts, levels, cross-cuts, sumps, adits, pits, railways, roads, bridges, air trunks, buddles, watercourses, storehouses, bigsteads, smithies, forges, workshops, mills, and other buildings, erections and works already sunk, driven, dug, worked, erected, built, affixed, set up or made, or which they, or any other of them, shall sink, drive, dig, work, or erect, build, affix, set up, or make, during the said term, in or upon the said demised premises (excepting the malleable iron

*To deliver up
demised
premises at the
end of term.*

No. VI. rails and chairs hereinafter mentioned), unto the said (*lessor*), his heirs or assigns.

Lease of a Lead Mine where all the Ore raised is to be Smelted on the Premises.

Lessor to have the use of lessee's iron rails for two years after the end of term.

21. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED AND AGREED, that it shall be lawful for the said (*lessor*), his heirs or assigns to have the use and enjoyment of all the malleable iron rails and chairs, now or hereafter to be laid down by the said (*lessees*), their executors, administrators or assigns, upon the said demised premises, for any time not exceeding two years after the expiration or sooner determination of the said term hereby granted, for the purpose of carrying on the workings of the said mine, he the said (*lessor*), his heirs or assigns, paying unto the said (*lessees*), their executors, administrators or assigns a fair compensation for the use thereof; AND in case any dispute shall arise as to the amount of such compensation, the same shall be determined by the award of two referees or their umpires in manner herein-after mentioned.

Lessor to have the option of purchasing at the two years' end.

22. AND ALSO that in case the said (*lessor*), his heirs or assigns shall, at the expiration of such two years as aforesaid, be desirous of purchasing the said iron rails and chairs, and shall give two calendar months' previous notice in writing of such desire to the said (*lessees*), their executors, administrators or assigns (such notice to be left at the chief counting-house or office of the said (*lessees*), their executors, administrators or assigns), the said (*lessor*), his heirs or assigns shall be at liberty to purchase such iron rails and chairs at a fair valuation, deducting therefrom the costs of providing, laying down, and fixing an equal quantity of new or serviceable wooden rails in good condition; the amount of which valuation and deduction, in case any dispute shall arise concerning the same, to be settled by the award of two referees, or their umpire, as hereinafter mentioned.

If lessor declines to purchase, lessees may remove iron rails, &c., on fixing wooden rails in lieu thereof.

23. BUT in case the said (*lessor*), his heirs or assigns, shall omit to give notice of his desire to purchase as aforesaid, it shall be lawful for the said (*lessees*), their executors, administrators or assigns or their or any or either of their agents or servants, at any time or times within one calendar month after the expiration of the said two years, to remove the said

malleable iron rails and chairs as aforesaid, and to employ horses, carts, carriages, and such other ways and means as may be deemed expedient for that purpose, they the said (*lessees*), their executors, administrators or assigns, providing, laying down and fixing in lieu thereof an equal quantity or measurement of good and serviceable wooden rails and sleepers, or, at the option of the said (*lessees*), their executors, administrators or assigns, paying unto the said (*lessor*), his heirs or assigns, a sum of money equivalent to the costs of providing, laying down, and fixing such wooden rails and sleepers as aforesaid; and in case any dispute shall arise as to the amount of such charges, the same shall be settled by arbitration as aforesaid.

No. VI.

Lease of a Lead Mine where all the Ore raised is to be Smelted on the Premises.

24. PROVIDED ALSO, AND IT IS HEREBY FURTHER DECLARED AND AGREED, that in case the said (*lessor*), his heirs or assigns, shall at the expiration or sooner determination of the said term, be desirous of purchasing all, or any part of the miners' or blacksmiths' tools, gins, gin-ropes, pulleys, kibbles, tubs, washing-tubs, washing tools, fleaks, water-wheels, waggons, wheelbarrows, pulleys, engines and machinery of any kind or description, and stock of peat, iron and wood, which may be used in the carrying on the workings of the said mines, and shall give two calendar months' previous notice in writing of such desire to the said (*lessees*), their executors, administrators or assigns (such notice to be left at the chief counting-house or office of the said (*lessees*), their executors, administrators or assigns as aforesaid), it shall lawful for the said (*lessor*), his heirs or assigns, to purchase the same, the price of which, in case any dispute shall arise concerning the same, shall be settled by arbitration in manner hereinafter mentioned. BUT in case the said (*lessor*), his heirs or assigns, shall omit to give notice of his or their intention to make such purchase as last aforesaid, it shall be lawful for the said (*lessees*), their executors, administrators or assigns, or their agents or servants, either with or without horses, carts, waggons or carriages, or by such other ways and means as they or either of them shall think fit, at any time or times within the space of one calendar month after the expiration or sooner determination of the said term, to remove and take away all such miners' tools, blacksmiths' tools, gins, gin-ropes, pulleys, kibbles, tubs, washing-tubs, washing tools, fleaks, water-wheels, carts,

Power to lessor to purchase mines or blacksmiths' tools, and in case of his declining to do so, lessees may remove them.

No. VI. carriages, wheelbarrows, pulleys, engines and machinery of all descriptions, and stock of peat, iron and wood.

Lease of a Lead Mine where all the Ore raised is to be Smelted on the Premises.

Lessees to have the use of mills, &c., for twelve months of the end of term for the purpose of dressing their ores.

25. AND IT IS HEREBY FURTHER DECLARED, that it shall be lawful for the said (*lessees*), their executors, administrators or assigns, to have the use of the mills, bigsteads and floorings upon the said demised premises, for any time not exceeding the space of twelve calendar months after the expiration or sooner determination of the said term, for the purpose of washing, dressing and clearing off the ores and minerals, whether in slag, or otherwise, upon the wastes of the said demised premises, and for smelting the same; the same duties and reservations to be paid or allowed to the said (*lessor*), his heirs or assigns; but so nevertheless that such privilege shall not encroach upon or injure the said (*lessor*), his heirs or assigns, or his or their lessees or under-tenants, and so that his or their estate or interest in the said premises shall not be injured or prejudiced thereby.

Power of distress.

26. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that in case any of the duties, rents or reservations hereby reserved, shall at any time or times be behind and unpaid in part or in the whole, contrary to the reservations aforesaid, then and in every such case, after demand made in writing of the duties, rents or reservations so unpaid, it shall be lawful for the said (*lessor*), his heirs or assigns, to enter upon the said hereby demised premises, and then and there to distrain all and every or any of the malleable lead, piece and pig, and the slag and slaghearth, lead, and also all or any of the horses, engines, whimseys, waggon, carts, ropes, rollers, tools, live and dead stock, utensils and materials, and all other goods, chattels and effects whatsoever, used or employed in or about the said mines and premises, and to dispose of the distress and distresses then and there found, according to due course of law, and in like manner as in cases of distress for rent between landlord and tenant. TO THE INTENT, that thereby and therewith or otherwise, the duties, rents or reservations hereby reserved, and all costs and expenses incurred by the nonpayment thereof as aforesaid, shall be fully paid and discharged.

Proviso for re-entry in case

27. PROVIDED ALSO, AND IT IS HEREBY FURTHER DECLARED,

that in case the said (*lessees*), their executors, administrators or assigns, shall neglect to render unto the said (*lessor*), his heirs or assigns, the said one-fifth part of the lead hereby reserved, at such time or times, and in such condition as aforesaid, and shall not well and truly observe and perform the covenants, conditions and agreements herein contained, and which on their parts ought to be rendered, observed and performed, according to the true intent and meaning of these presents, THEN and thereupon it shall be lawful for the said (*lessor*), his heirs or assigns, into and upon the said hereby demised premises to enter, and the same to have again, repossess and enjoy as in his or their original estate or right in the same. [ADD covenant by lessor that he has good right to demise, and for peaceable enjoyment, as in last precedent, clause 24, 25, p. 619; AND arbitration clause, *ut ib.* clause 27, p. 620.]

No. VI.

*Lease of a Lead
Mine where
all the Ore
raised is to be
Smelted on the
Premises.*

*of breach of
covenant.*

IN WITNESS, &c.

SECTION V.

ATTORNMENTS.

No. I.—ATTORNMENT BY SEVERAL TENANTS TO A MORTGAGEE WITH THE APPROVAL OF THE MORTGAGOR. VARIATION WHERE THE ATTORNMENT IS MADE BY A SINGLE TENANT.

No. II.—COMMON FORM OF AN ATTORNMENT MADE BY SEVERAL TENANTS.

No. III.—SHORT FORM OF ATTORNMENT BY MORTGAGOR TO MORTGAGEE.

No. IV.—FORM OF ATTORNMENT BY A TENANT TO A MORTGAGEE AFTER A JUDGMENT RECOVERED BY HIM IN AN ACTION OF EJECTMENT.

No. I.

ATTORNMENT BY SEVERAL TENANTS TO A MORTGAGEE, WITH
THE APPROVAL OF THE MORTGAGOR. VARIATION. WHERE
THE ATTORNMENT IS MADE BY A SINGLE TENANT. (a)

WE, (b) whose names are hereunto subscribed, being severally tenants in possession of the several estates, lands and tenements specified and set opposite to our respective names in the schedule hereunder written, as tenants of (*mortgagor*), of, &c., at the request and by the direction of the said (*mortgagor*), testified by his signature hereto, do hereby severally attorn and become tenants of the said estates, lands and tenements unto (*mortgagee*), of, &c., to whom the same were by a certain indenture dated the day of last, and made between the said (*mortgagor*) of the one part, and the said (*mortgagee*) of the other part, conveyed and assured unto the

Attornment by
several tenants
to a mortgagee.

(a) A simple act of attornment to the persons legally entitled to the reversion requires no stamp, whether as an agreement, or as an instrument not otherwise charged, an act of this kind never having been deemed of sufficient importance to occupy a place in the schedules of the stamp acts: (*Cornish v. Learell*, 8 B. & C. 471; *Doe d. Wright v. Smith*, 6 Add. & Ell. 255; S. C. 3 Nev. & Per. 335; *Cov. on Stamps*, 199.) But if an attornment be made by persons having no right to the property, such an instrument will not be admissible in evidence unless it be stamped as an agreement; and it has recently been determined, that although a mere memorandum of attornment required no stamp, yet if, as in the above form, it proceeded to state the amount of rent and the mode of payment, it became an agreement chargeable with duty: (*Franklin v. Franklin*, 3 Per. & Dav. 365; and see *Hughes New Stamp Act*, 69, note 7.) An attornment as in the above form will therefore require an agreement stamp.

Attornment
containing an
agreement to
pay the rent
must be stamped
as such.

(b) If the attornment is made by one person only, substitute—

“ I, A. B., of,” &c.

Attornment by
one tenant.

No. I.

*Attornment by
several Tenants
to a Mortgagee
with the
Approval of the
Mortgagor.
Variation, &c.*

said (*mortgagee*), his heirs and assigns, for securing to him, his executors, administrators and assigns, the money therein expressed to be advanced by him as therein mentioned; and we (*c*) do hereby [severally] (*d*) undertake and agree to pay the rent payable in respect of the said premises, as and whenever the same shall become due as in the said schedule expressed, unto the said (*mortgagee*) or his representatives, who for the time being, through or under him, shall be entitled to receive the same, or unto his or their agent or agents lawfully authorized and appointed by him or them to receive the same; IN TESTIMONY whereof we (*e*) have hereunto paid unto the said (*mortgagee*) the sum of one shilling in confirmation of the said agreement, and in part of the said rents payable from us (*f*) in respect of the said estates. (*g*) As WITNESS OUR HANDS (*h*) this day of .

WITNESS.

(*Mortgagor.*)*A. B.**C. D.**E. F.*

THE SCHEDULE ABOVE REFERRED TO.

Tenant's names.	Names of Tenements.	Parishes.	Yearly rents.	When payable.

(*c*) Or "I."(*d*) If one party only attorn this word must be omitted.(*e*) Or "I."(*f*) Or "me."

Practical
remarks.

(*g*) Although a mortgagee may, where a lease is granted by a mortgagor subsequently to the mortgage, treat the lessee as a trespasser, and eject him

No. I.

without any notice whatever (*Keech v. Hall*, Doug. 21), he has no right to distrain upon him for any rent accrued due during the tenancy: (*Rogers v. Humphreys*, 4 Ad. & El. 313; 5 Nev. & Man. 513; *Partington v. Woodcock*, 6 Ad. & El. 690; 5 Nev. & Man. 672.) In case, therefore, a mortgagee does not desire to disturb the tenancy of the lessee, it is usually arranged that the latter shall attorn tenant to the mortgagee at the rent reserved by the lease, in order to establish a relationship of landlord and tenant between them, by which means the mortgagee will be enabled to distrain for the rent, which, as we have previously stated, he could not otherwise have done. But where the demise is prior to the mortgage, then a mortgagee, as incidental to his estate, upon giving notice to the tenant to pay him the rents, may distrain without any act of attornment whatever, the notice operating as an attornment at common law, and thus relating back to the time of the grant, and taking in all rents due from the tenant at the time of such notice, and not actually paid over to the mortgagor: (*Coote*, Mort. 416; stat. 4 Anne, c. 16, ss. 9, 16; *Moss v. Gallimore*, 1 Doug. 279; *Doe v. Boulter*, 1 Nev. & Per. 650; *Waddelove v. Barnett*, 2 N. R. 538; 2 Scott, 763; 1 Hughes Pract. Mort. 674.)

Attornment by several Tenants to a Mortgagee with the Approval of the Mortgagor. Variation, &c.

(h) Or "my hand."

No. II.

COMMON FORM OF AN ATTORNMENT BY SEVERAL TENANTS.

Common form
of an attorn-
ment when
made by several
tenants.

WE, whose names are hereunto subscribed, being severally tenants of the several estates, lands, tenements and premises, set opposite to our respective names in the schedule hereunder written, do hereby severally agree to pay the respective rents payable for the same premises whenever and as the same shall become due, as in the said schedule expressed, unto the said (*A. B.*), or his representatives for the time being, who, through or under him shall be entitled to receive the same, or unto his or their agent or agents lawfully authorised by him or them to receive the same: IN TESTIMONY whereof we have severally paid unto the said (*A. B.*), the sum of one shilling in the name of attornment, and in part of the said rents.

AS WITNESS, &c.

[INSERT *schedule as annexed to last precedent.*]

No. III.

SHORT FORM OF ATTORNMENT BY MORTGAGOR TO
MORTGAGEE.

AND for the better enabling the said (*mortgagee*) to receive and enforce payment of the interest hereby reserved on the several days hereinbefore appointed for the payment thereof, the said (*mortgagor*) doth hereby attorn and become tenant to the said (*mortgagee*) at the yearly rent of £ (*same amount as interest*), to be paid by two equal half-yearly payments, on the day of and day of in every year during the continuance of this mortgage security.

IN WITNESS, &c.

No. IV.

FORM OF ATTORNMENT BY A TENANT TO A MORTGAGEE
AFTER A JUDGMENT RECOVERED BY HIM IN AN ACTION
OF EJECTMENT. (a)

Recital that
mortgagee has
obtained
judgment in
ejectment
against mort-
gagor.

Attornment.

To pay rent of
78l.

To deliver up
possession on
the expiration
of term.

WHEREAS (*mortgagee*), of, &c., hath lately obtained judgment in an action of ejectment brought against me for [HERE SET OUT *parcels as described in the judgment*] now in my possession, situate within the parish of A., in the county of B., which said premises had been conveyed to the said (*mortgagee*), his heirs or assigns, by a certain indenture dated the day of , and made between (*mortgagor*), of, &c., of the one part, and the said (*mortgagee*) of the other part. Now I do hereby attorn and become tenant to the said (*mortgagee*) for or in respect of the several messuages, farms and tenements specified and set forth in the schedule hereunto annexed; AND do hereby further agree to pay the annual rent of 78l. for or in respect of the said premises, as and whenever the same shall become due, unto the said (*mortgagee*), his heirs or assigns, or his or their agent or agents lawfully authorised by him or them to receive the same; and in testimony of such attornment have paid to the said (*mortgagee*), the sum of one shilling, in part of the said rent payable by me; AND I do hereby further agree, on the expiration or sooner determination of my lease in the said premises, to deliver up the possession of the same unto the said (*mortgagee*), his heirs or assigns, and that I will not pay such rents, nor deliver up possession of the said premises, or any of them, or any part of the same, to any other person or persons whomsoever, unless compelled so to do by the judgment, order, or decree of some court of law or equity.

IN WITNESS, &c.

(a) See observation, *ante*, p. 635, note (a).

STAMP DUTIES ON LEASES.

Stamp duties on leases were first imposed by the statute 44 Geo. 3, c. 98, but all duties were shortly afterwards repealed by statute 48 Geo. 3, c. 149, and other duties substituted in lieu of them. The latter duties were again repealed by the General Stamp Act (55 Geo. 3, c. 184), which were again altered by the recent Stamp Act (13 & 14 Vict. c. 97), as will be seen by the annexed comparative table of the old and new stamp duties relating to leases, and also partially altered by the recent statute 17 & 18 Vict. c. 88.

When *ad valorem* duties were first imposed upon leases.

48 Geo. 3, c. 149.

55 Geo. 3, c. 184.

13 & 14 Vict. c. 97.

Under the General Stamp Act (55 Geo. 3, c. 184), as also under the new one (13 & 14 Vict. c. 97), a lease granted in consideration of a sum of money by way of fine, without any yearly rent, or with any yearly rent under 20*l.*, is charged with the same duty as for a conveyance on the sale of lands, for a sum of money of the same amount :

Save and except leases for a life or lives, not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted, and leases for a term absolute, not exceeding twenty-one years, granted by ecclesiastical corporations, aggregate or sole, which, under both the above-mentioned acts, are expressly exempted from the duties on conveyances upon the sale of lands, but not being expressly exempted from all stamp duty, will still require the common deed (1*l.* 15*s.*) stamp.

Exception as to leases for lives &c., and leases by ecclesiastical corporations.

The amount, both of the old duties and the new, payable in respect of the reserved rent, under the General Stamp Act, 55 Geo. 3, c. 184, and 13 & 14 Vict. c. 97, is as follows :

LEASES IN ENGLAND OR SCOTLAND.

AT A YEARLY RENT.				Old Duty.	New Duty.
	£		£	£ s. d.	£ s. d.
Exceeding	5	Not exceeding.....	5	1 0 0	0 0 6
"	10	"	10	1 0 0	0 1 0
"	15	"	15	1 0 0	0 1 6
Amounting to ...	20	Not amounting to...	20	1 0 0	0 2 0
Exceeding	20	Not exceeding.....	20	1 10 0	0 2 0
"	25	"	25	1 10 0	0 2 6
"	50	"	50	1 10 0	0 5 0
"	75	"	75	1 10 0	0 7 6
Amounting to	100	Not amounting to...	100	1 10 0	0 10 0
		Not exceeding	100	2 0 0	0 10 0

LEASES IN ENGLAND OR SCOTLAND—continued.

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AT YEARLY RENT.				Old Duty.	New Duty.
Exceeding	100	Not exceeding	150	2 0 0	5s. for every 50l. and for any frac- tional part of 50l.
"	150	Not amounting to...	200	2 0 0	
Amounting to	200	Not exceeding	200	3 0 0	
Exceeding	200	"	250	3 0 0	
"	250	"	300	3 0 0	
"	300	"	350	3 0 0	
"	350	Not amounting to...	400	3 0 0	
Amounting to	400	Not exceeding	400	4 0 0	
Exceeding	400	"	450	4 0 0	
"	450	"	500	4 0 0	
"	500	"	550	4 0 0	
"	550	Not amounting to...	600	4 0 0	
Amounting to	600	Not exceeding	600	5 0 0	
Exceeding	600	"	650	5 0 0	
"	650	"	700	5 0 0	
"	700	"	750	5 0 0	
"	750	Not amounting to...	800	5 0 0	
Amounting to	800	Not exceeding	800	6 0 0	
Exceeding	800	"	850	6 0 0	
"	850	"	900	6 0 0	
"	900	"	950	6 0 0	
"	950	Not amounting to...	1 000	6 0 0	
Amounting to	1,000	Not exceeding	1,000	10 0 0	
Exceeding	1,000			10 0 0	

Leases for a less period than a year, how chargeable with stamp duty.

Where a lease is in consideration of a fine, and also of a rent.

But, under the more recent statute, 17 & 18 Vict. c. 83, leases for a less period than a year are now charged with a stamp duty which would be chargeable on a lease at a yearly rent of the same amount as the sum actually reserved as the rent for the time for which the premises are let.

A lease granted in consideration of a fine, and a yearly rent of 20l. or upwards, is chargeable both with the *ad valorem* duties on a lease in consideration of a fine, and of a rent only of the same amount.

And, by the schedule to this act, a lease for any term of years exceeding thirty-five, at a yearly rent, with a fine, is charged as follows:—

DUTIES.	If the term shall not exceed 100 years.	If the term shall exceed 100 years.
Where the yearly rent shall not exceed £5	£ s. d. 0 3 0	£ s. d. 0 6 0
And where the same shall exceed		
£5 and not exceed ... 10	0 6 0	0 12 0
10 " " ... 15	0 9 0	0 18 0
15 " " ... 20	0 12 0	1 4 0
20 " " ... 25	0 15 0	1 10 0
25 " " ... 50	1 10 0	3 10 0
50 " " ... 75	2 5 0	4 10 0
75 " " ... 100	3 0 0	6 0 0
And where the same shall exceed £100, then for every £50, and fractional part of ... 50	1 10 0	3 0 0

And where any such lease shall be granted in consideration of a fine, and also of a yearly rent, such lease shall be chargeable only in respect of such fine with the *ad valorem* duties charged on conveyances under stat. 13 & 14 Vict. c. 97.

Leases of mines,
and leases where
renter is a
corn rent.

Leases of mines, or where the renter is of corn rents, are brought within the new Stamp Act (13 & 14 Vict. c. 97), which, from the mode in which these reservations were made, were not within the words of the Act (55 Geo. 3, c. 184.) But it is now provided (13 & 14 Vict. c. 97, schedule LEASE), that a "lease or tack of any mine or minerals or other

property of a like nature, either with or without any other lands, tenements, hereditaments, or heritable subjects, where any portion of the produce of such mines or minerals shall be reserved to be paid in money or kind, if it shall be stipulated that the value of such portion of the produce shall amount at least to a given sum per annum, or if such value shall be limited not to exceed a given sum per annum, to be specified in such lease or tack, then the said *ad valorem* duty on leases shall be charged in respect of the highest of such sums so given or limited for any year during the term of such lease or tack.

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"And where any yearly sum shall be reserved in addition to or together with such produce, relative to the yearly amount or value of which produce there shall be no such stipulation or limitation as aforesaid, the said *ad valorem* duty shall be charged in respect of such yearly sum.

Where a yearly sum is reserved in addition to a rent in kind.

"And where both a certain yearly sum, and also such produce relative to the yearly amount or value of which there shall be such stipulation or limitation as aforesaid shall be reserved, the said *ad valorem* duty shall be charged on the aggregate of such yearly sum, and also of the highest yearly amount or value of such produce."

Where both a yearly rent and a render in produce is reserved.

And with respect to corn rents, under the general regulations as to leases and tacks, "Where, in any of the aforesaid several cases of lease or tack, any fine, premium, or grassum, or any rent, payable under any lease or tack, shall consist wholly or in part of corn, grain, or victual, the value of such corn, grain or victual shall be ascertained or estimated at and after any permanent rate of conversion which the lessee may be specially charged with, or have it in his option to pay; and if no such permanent rate of conversion shall have been stipulated, then in England and Ireland respectively at and after the prices, upon an average of twelve calendar months preceding the first day of January next before the date of such lease or tack, of the average prices of British corn published in the *London Gazette* in the manner directed by any act in force for the commutation of tithes in England and Wales; and in Scotland at and after the fairs prices of the county in which the lands or any part thereof lie, upon an average of seven years preceding the date of such lease or tack; and such respective values shall be deemed and taken to be the fine, premium, or grassum, or yearly rent, or part thereof respectively, as the case may be, in respect whereof the *ad valorem* duty shall be charged as aforesaid."

As to corn rents.

In order also to settle any question that might arise as to whether, in the case of leases by joint tenants, coparceners, or tenants in common, where there is a several demise, and a several reservation of rent payable to each, as many stamps as demises might not be required, the new Stamp Act expressly provides that—

As to leases by joint tenants, coparceners, or tenants in common.

"Where separate and distinct fines, premiums, or grassums shall be paid to several lessors, being joint tenants, tenants in common, or coparceners, in England or Ireland, or proprietors *pro indiviso* in Scotland, who shall, by one and the same deed or instrument, jointly or severally demise or lease the lands, tenements, hereditaments, or heritable subjects of which they are such joint tenants, tenants in common, or coparceners, in England or Ireland, or proprietors *pro indiviso* in Scotland, or where separate and distinct rents shall be by one and the same deed or instrument reserved or made payable, or agreed to be reserved or made payable, to the lessor or to several lessors, being such joint tenants, tenants in common, or coparceners in England or Ireland, or proprietors *pro indiviso* in Scotland, the *ad valorem* duties shall be charged in respect of the aggregate amount of such fines, premiums, or grassums, and of such rents respectively."

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Distinct reservations by joint tenants, tenants in common, or coparceners, all covered by an *ad valorem* stamp.

*Blount v.
Pearman.*

Parry v. Deere.

Previously however to this provision, it had been determined that several distinct habendums and reservations of rent, in respect of distinct properties all demised by the same deed, were all covered with one *ad valorem* stamp adapted to the aggregate amount of rent: hence, where a slate-pit and certain stone-quarries were demised for fourteen years—the former from the 25th of March, 1815, at 70*l.* per annum; the latter from the 29th September, 1817, at 130*l.* per annum—the lease was stamped for the aggregate amount of the two sums, instead of for each separately, and this was held to be sufficient: (*Boase v. Jackson*, 3 Bro. & Bing. 185.)

In *Blount v. Pearman*, also (1 Bing. 408, N. C.), it was determined that a lease of two separate farms, having two habendums differing from each other in duration, with a reservation of two distinct rents and covenants, some applying to one farm and some to another, was covered by one *ad valorem* stamp adapted to the aggregate amount of the rents, which was the proper stamp, and not a separate stamp for each rent: (see also *Lessee of Kennedy v. Hayes*, 2 Ir. Law R. 186; *Lessee of Stewart v. Sisson*, Hayes, 512.) And in another case (*Parry v. Deere*, 6 Ad. & Ell. 551; 1 Nev. & Per. 47), where an agreement was entered into for letting lands at the rent of 200*l.* for the first ten years, and at 210*l.* for the remainder, and also other lands at the rent then paid for the same by other persons, which rent was not specified, but was proved to be certain sums respectively, the agreement was stamped with 3*l.* as a lease sufficient to cover a rent exceeding the aggregate of all the yearly sums in question; and a question arose as to whether, in respect of the demise of the lands at rents not stated, there should not have been an additional stamp of 1*l.* 15*s.*, as for a lease not otherwise charged; but the court held the stamp to be sufficient. The subject-matter of the demise was entire: it was a demise, and a demise only, for rents reserved, although not specified in every particular, there being nothing in the Stamp Acts to oblige the parties to set forth in a lease the amount of the rent, as is the case with respect to the consideration in a conveyance upon sale. In the instance of a lease, the *ad valorem* duty is charged on the amount of rent reserved, and although the amount might not exactly appear in the lease itself, still, according to the letter of the act, the duty is payable in respect of it; unless it should be held that the general principle, that an instrument must be stamped according to what appears on the face of it must prevail. In the case of a conveyance upon sale, the duty is charged on the consideration expressed on the deed, and which consideration is required to be *truly* expressed therein, in order that the full and proper duty may be attached. Viewed in either way the stamp was sufficient. Nor will the omission to set out the premium truly invalidate the lease, although it will subject the parties concerned to a penalty: (*Duck v. Braddyll*, 13 Pri. 455; McClel. 217; *Doe d. Higginbotham v. Hobson*, 3 Cow. & Ry. 196.)

Relief from
penalty in
certain cases.

Another important provision in the new Stamp Act was to afford relief against penalties which had been incurred by a misapprehension amongst many of the Profession, that where leases were granted upon or after sales made in consideration of money paid to some other person than the lessor, no *ad valorem* duty would become payable, such duty not attaching to any other consideration than that passing between the lessor and lessee; the consequence was, that leases of the above kind were often granted without being impressed with any *ad valorem* duty for the consideration. But this fallacious practice, founded it seems on the decision of *Baone v. Mitchell* (1 B. & C. 18), was subsequently

decided to be illegal: (*Attorney-General v. Brown*, 3 Exch. 662; 18 L. J. R. (N. S.), 336, Exch.) The new Stamp Act, however, affords relief for penalties previously incurred, and points out the law with respect to future transactions of this nature.

With respect to the relief from penalties, the 10th section of the act, after reciting that numerous leases had, from time to time, been granted upon or after sales made in consideration of money paid to some other person or persons than the lessor, without stamping such leases with any *ad valorem* stamp in respect of such pecuniary consideration, the parties to such leases, conceiving that the provisions of the several acts now in force requiring the consideration to be set out, and imposing an *ad valorem* duty thereon, did not apply to any other consideration than that passing between the lessor and lessee; but that inasmuch as doubts had arisen upon this subject, it was reasonable that such relief as therein-after mentioned should be afforded in such cases, proceeds to enact and declare, "that no lease made and executed before the 20th day of March, 1850, shall be adjudged, deemed or taken to be improperly stamped by reason of there not being an *ad valorem* stamp impressed thereon for or in respect of any pecuniary consideration which may have been paid or may be therein expressed to be paid by the lessee to any other person or persons than the lessor, and that the seller and the lessee respectively in any such lease, and any attorney, solicitor, writer to the signet, or other person employed in or about the preparation or completion of the same, shall be exempted from all penalties and other liabilities for or by reason of any default in setting forth any such pecuniary consideration as aforesaid."

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As to relief
from penalties,
with respect
to past
transactions.

And with respect to future *ad valorem* stamps, it is provided in the schedule LEASE, annexed to the said act "that where any person, having, contracted for, but not having obtained, a lease of any lands or other property, shall contract to sell such lands or other property, or any part thereof, or his right or interest therein or thereto, to any other person, and a lease shall accordingly be granted to such other person, the purchase money or consideration which shall be paid or given or agreed to be paid or given to the person immediately selling to such lessee, shall be set forth in such lease, and such lease shall be charged as well with the said *ad valorem* duty on such purchase money or consideration as with the duty on the purchase money or consideration or rent paid or reserved to the lessor."

As to future
transactions.

A lease or tack not otherwise charged, is charged with a duty of 1*l.* 1*s.*, and it is then provided "that no *ad valorem* duty shall be chargeable in respect of any penal rent, or increased rent in the nature of a penal rent, reserved in any such lease or tack as aforesaid."

As to leases not
otherwise
charged.

The clause with respect to penal rents in the new Stamp Act, was probably inserted to remove a doubt which seems to have existed amongst the Profession as to whether, in the event of such additional rent becoming payable by the lessee's incurring the penalty, the lease would require to be impressed with a proportionate stamp, a point which seems never to have been judicially decided.

As to penal
rents.

Questions appear to have frequently arisen as to whether instruments relating to the letting of property are to be construed as leases or as mere agreements. The cases upon this subject are not only extremely numerous, but many of them are so opposed to each other that all attempt to reconcile the whole of them is hopeless. No form of words being necessary to constitute an immediate demise, the best

As to distinction
between leases
and agreements.

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criterion for determining the question seems to be the intention of the parties, where such intention can possibly be collected from the language of the instrument itself, in which, if there are sufficient expressions to denote that its object and design is, that one party shall divest himself of the possession, and the other come into it for a certain specified time, such expressions, whether they be in the form of a licence, covenant, or agreement, are of themselves sufficient, and will, in construction of law, be as effectual for creating a lease as if the most pertinent form of words had been used for that purpose; whilst, on the other hand, where the most technical form of words, whereby to describe and pass a present lease for years, are made use of, yet if, taking the whole instrument together, there appears to be no such intent, but it is only preparatory to and relative to a future lease to be thereafter made, the law will rather do violence to the words, than break through the manifest intention of the parties: (1 Hughes Pract. Sales, 507, 2nd edit.)

Leaning of the
courts in favour
of the construc-
tion of a lease.

The leaning of the courts, however, seems generally to have been to construe instruments rather as leases than agreements, when expressed in such terms as would admit of that construction, as may be shown by the numerous cases in which this construction has been adopted: (see *Anon.*, Moore, 38, cited *Maldon's case*, Cro. Eliz. 33; *Hemington v. Wise*, Cro. Eliz. 486; Noy, 57; *Drake v. Munday*, Cro. Car. 207; *Evans v. Thomas*, Cro. Jac. 172; *Lady Montague's case*, ib. 301; *Richards v. Seeley*, ib. 79; *Barry v. Nugent*, cited 5 T. R. 165; *Baxter v. Abrahall*, 2 W. Black. 973; *Right ex dem. Green v. Procter*, 4 Bur. 2208; *Poole v. Bentley*, 12 East, 286; *Doe dem. Colcombe v. Fidler*, Peake Add. Cases, 35; *Doe ex dem. Walker v. Groves*, 15 East, 244; *Wright v. Trevesant*, 3 Car. & Pay. 441; S. C., 1 Mood. & Malk. 231; *Prior v. Judson*, 6 Bing. 206; S. C., 3 Moore & Pay. 589; *Doe dem. Philip v. Benjamin*, 1 Per. & Dav. 440; *Doe ex dem. Pierson v. Ries*, 8 Bing. 187; S. C., 1 Moo. & Scott, 159; *Alderman v. Neate*, 4 Mees. & Wels. 704; *Wilson v. Chisholm*, 4 Car. & Pay. 474; *Warman v. Faithful*, 5 B. & Ad. 1042; S. C., 3 Nev. & Man. 137.)

When an
instrument will
be construed as
an agreement
only.

But, where the intention is manifest that the instrument is not intended to operate as a lease; as, for example, if it was to contain an express proviso to that effect, it will be treated as a mere agreement, notwithstanding it may contain words of present demise, with a stipulation for re-entry on breach of the covenants: (*Perring v. Brook*, 7 Car. & Pay. 360; S. C., 1 Mood. & Rob. 510.) Expressions, also which denote that the lease is not to commence until some future period (*Doe dem. Jackson v. Ashburner*, 5 T. R. 163), or that some future act is to be done before the relation of landlord and tenant is to commence, will afford proof that the instrument was intended merely as an agreement for, and not an actual demise: (see *Doe dem. Coore v. Clare*, 2 T. R. 789; *Hayward v. Haswell*, 6 Ad. & Ell. 265; S. C., 1 Nev. & Per. 411; *John v. Jenkins*, 1 Cr. & Mees. 227; *Rawson v. Eicke*, 7 Ad. & Ell. 451; *Bicknell v. Hood*, 5 Mees. & Wels. 104; *Chapman v. Towner*, 6 Mees. & Wels. 100; *Brashier v. Jackson*, ib. 549; *Jones v. Reynolds*, 1 Ad. & Ell. (N.S.), 546; 1 Gale & Dav. 62; *Doe dem. Morgan v. Powell*, L. J. R. (N.S.), 5, C. P.) So, where the language is that of the tenant only, the instrument cannot operate as a demise, unless it be signed by both parties (*Clayton v. Burtonshaw*, 5 B. & C. 41), but the language being all on one side, where the instrument is signed by both parties, will not prevent it from taking effect as a demise: (*Wright v. Trevesant*, 3 Car. & Pay. 441; S. C., 1 Mood. & Malk. 231.)

Still, an agreement to pay additional rent, or to lay out money in repairs or improvements, is not a lease, but a mere collateral agreement: (*Hoby v. Roebuck*, 1 Marsh, 433.) Neither, in the case of an actual lease, will a covenant to expend a certain sum of money upon the premises, render any *ad valorem* duty payable on the amount to be so expended: (*Nicholl v. Cross*, 13 L. J. Rep. (N. S.), 244, Exch.)

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Another mode by which it was in some measure determined whether an instrument was to take effect as an agreement, or as a lease, was the stamp which the parties thought proper to attach to it; but in order that this might have any weight, the stamp must have been impressed upon the instrument at the time of its signature, or at any rate, before any doubt, question or dispute had arisen with respect to its operation; for, if placed afterwards, it would merely serve to show it to be such as the party producing it had been advised would be the best to have adopted after such doubt, question or dispute had arisen: (*Morgan v. Bissel*, 3 Taunt. 71.) It has also been long settled, that any collateral circumstance accruing subsequently to the making of the instrument, will not be permitted to have any weight in guiding its construction. The thing to be considered is, the intention of the parties at the time of entering into it, as therein expressed.

How far stamp may explain the nature of the instrument.

Many questions of this kind are not, however, likely to arise with regard to future instruments, as a recent act of Parliament (8 & 9 Vict. c. 106) expressly enacts that a lease required *by law to be in writing*, of any tenements or hereditaments made after the 1st day of October, 1845, shall be void at law unless made by deed; so that no instrument made after the above-mentioned period can operate as a lease, which by law was required to be in writing, unless it be under seal.

Alterations in the law effected by stat. 8 & 9 Vict. c. 106.

This enactment does not, however, comprehend such leases as, under the exception contained in the Statute of Frauds (29 Car. 2, c. 3, s. 2), were not required to be in writing, viz., leases not exceeding three years from the time of making, whereupon the rent reserved to the landlord shall amount to two-thirds of the improved value; and it seems also that the act 8 & 9 Vict. c. 106, will not prevent an instrument under seal from being construed as an agreement, where, from the terms in which it is expressed, the parties evidently intended it should have that operation; and a writing, although containing words of present demise, but inoperative as a lease, because not by deed, may nevertheless be construed as an agreement to grant a lease: (*Stone v. Rogers*, 2 Mee. & Wels. 443.)

As to leases within the exception in the Statute of Frauds.

The proper course, however, in all cases where the instrument is intended to operate as a mere agreement for a lease, and not an actual demise, is to insert a statement to that effect in the instrument, viz., that it shall not operate as a lease or present demise of the premises, but simply an agreement for a lease: *ut ante*, Section I., No. I., clause 5, p. 432.

Practical suggestions.

It must also be borne in mind, that although leases within the exception contained in the 2nd section of the Statute of Frauds need not, either under that act, or the act 8 & 9 Vict. c. 106, be made in writing, still, if a writing be employed, the same stamps will be required as in leases for any other term of years: (*Prosser v. Phillips*, Bull. N. P. 269.)

Under the General Stamp Act (55 Geo. 3, c. 34), prior to the statute 13 & 14 Vict. c. 97, counterparts of leases charged with a duty not exceeding 1*l.*, were charged with the same duty as on an original lease,

As to duplicates or counterparts.

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—

and where it exceeded that amount, with a duty of 1*l.* 10*s.*, and a progressive duty of 1*l.* But now under the latter enactment (13 & 14 Vict. c. 97, schedule, tit., Duplicate, or Counterpart), the duplicate or counterpart of any deed or instrument of any description whatever chargeable with any stamp duty, either under that schedule, or any other act or acts then in force, where the stamp duty or duties chargeable as aforesaid (exclusive of progressive duty), shall not amount to the sum of five shillings, the same duty is imposed as shall be chargeable on the original deed or instrument, including the progressive duty thereon (if any.)

And where the same (exclusive as aforesaid) shall amount to the sum of five shillings or upwards, the sum of five shillings.

And where, in the latter case, any such deed or instrument, together with any schedule, receipt, or other matter put or indorsed thereon or annexed thereto shall contain thirty common law folios or upwards, then for every additional fifteen common law folios, a further progressive duty of two shillings and sixpence.

Denoting
stamp.

Provided always, that in such latter case the duplicate or counterpart shall not be available unless stamped with a particular stamp for denoting or testifying the payment of the full and proper stamp duty on the original deed or instrument, which said particular stamp shall be impressed upon such duplicate or counterpart, on the same being produced, together with the original deed or instrument, and on the whole being executed and duly stamped in other respects.

Operation
stat. 16 & 17
Vict. c. 59,
upon denoting
stamps for
counterparts.

But now, by a still more recent enactment, 16 & 17 Vict. c. 59, s. 12, after reciting that by the said act 13 & 14 Vict. c. 97, a stamp of five shillings was granted and imposed upon the duplicate or counterpart of any deed or instrument chargeable with stamp duty (exclusive of progressive duty), to the amount of five shillings or upwards, and that it is provided that in such case the duplicate or counterpart shall not be available unless stamped with a particular stamp for denoting or testifying the payment of the full and proper stamp duty or the original deed or instrument, and that it was expedient to dispense with the said particular stamp or counterpart on counterparts of leases; notwithstanding anything contained in the said act, the counterpart of any lease of lands, tenements or hereditaments being duly stamped with the said stamp duty of five shillings, or any higher stamp duty, exclusive of progressive duties, and not being executed or signed by or on behalf of any lessor or grantor, shall be available as a counterpart without being stamped with a particular stamp for denominating or testifying the payment of the stamp duty payable on the original lease.

PART IV.
SETTLEMENTS.

SECTION I.

MARRIAGE ARTICLES.

No. I.—MARRIAGE ARTICLES BY WHICH THE REAL ESTATE OF THE INTENDED HUSBAND IS TO BE SETTLED TO THE USE OF HIMSELF FOR LIFE; INTENDED WIFE TO RECEIVE A RENT CHARGE FOR HER JOINTURE, AND SUBJECT THERETO, TO FIRST AND OTHER SONS SUCCESSIVELY IN TAIL, WITH REMAINDER TO DAUGHTERS AS TENANTS IN COMMON IN TAIL, WITH CROSS REMAINDERS BETWEEN THEM; WITH ULTIMATE REMAINDER TO RIGHT HEIRS OF INTENDED HUSBAND; ALSO POWER TO RAISE PORTIONS FOR CHILDREN; TO GRANT LEASES, AND OTHER USUAL POWERS.

No. II.—AGREEMENT TO SETTLE FREEHOLD AND LEASEHOLD ESTATES THE PROPERTY OF THE INTENDED HUSBAND, TO THE USE OF THE INTENDED HUSBAND FOR LIFE, THE INTENDED WIFE TO RECEIVE A RENT CHARGE THEREOUT BY WAY OF JOINTURE, SUBJECT TO WHICH THE INTENDED HUSBAND IS TO HAVE A POWER OF APPOINTMENT AMONGST THE CHILDREN OF THE MARRIAGE; AND IN DEFAULT OF APPOINTMENT, THE CHILDREN TO BE ENTITLED TO EQUAL SHARES OF THE WHOLE PROPERTY. THE SHARES OF SONS TO BECOME VESTED AT TWENTY-ONE, AND OF DAUGHTERS AT TWENTY-ONE OR MARRIAGE, WITH PROVISIONS FOR MAINTENANCE AND ADVANCEMENT IN THE MEANTIME.

No. III.—AGREEMENT TO SETTLE 4,000*l.* STOCK, THE PROPERTY OF INTENDED WIFE, UPON TRUST TO PAY THE DIVIDENDS TO INTENDED HUSBAND FOR LIFE; THEN TO INTENDED WIFE FOR LIFE IN CASE SHE SHALL HAPPEN TO SURVIVE HIM; WITH POWER OF APPOINTMENT AMONGST CHILDREN, AND IN DEFAULT THEREOF, AMONGST CHILDREN EQUALLY; SONS' SHARES TO BECOME VESTED AT TWENTY-ONE, AND DAUGHTERS' SHARES AT TWENTY-ONE OR MARRIAGE; AND IN CASE THERE ARE NO CHILDREN, THE INTENDED HUSBAND OR INTENDED WIFE, WHICHEVER SHALL HAPPEN TO SURVIVE, TO TAKE THE WHOLE.

No. IV.—MARRIAGE ARTICLES, BY WHICH ALL THE PRESENT AND FUTURE PROPERTY OF INTENDED WIFE IS AGREED TO BE SETTLED SO AS TO GIVE HER AN ABSOLUTE POWER OF APPOINTMENT, AND IN DEFAULT THEREOF UPON TRUST FOR HER SEPARATE USE FOR LIFE, WITH REMAINDER TO INTENDED HUSBAND FOR LIFE, BUT DETERMINABLE IN CASE OF HIS BECOMING BANKRUPT OR INSOLVENT; WITH LIMITATIONS TO THE ISSUE OF THE MARRIAGE IN EQUAL SHARES; WITH PROVISIONS FOR MAINTENANCE, POWER TO VARY SECURITIES, GRANT LEASES, SELL, EXCHANGE, APPOINT NEW TRUSTEES, &c.

No. I.

MARRIAGE ARTICLES BY WHICH THE REAL ESTATE OF THE INTENDED HUSBAND IS TO BE SETTLED TO THE USE OF HIMSELF FOR LIFE; INTENDED WIFE TO RECEIVE A RENT CHARGE FOR HER JOINTURE, AND SUBJECT THERETO TO THE FIRST AND OTHER SONS IN TAIL SUCCESSIVELY, WITH REMAINDER TO DAUGHTERS AS TENANTS IN COMMON IN TAIL, WITH CROSS REMAINDERS BETWEEN THEM, WITH THE ULTIMATE REMAINDER TO THE RIGHT HEIRS OF THE INTENDED HUSBAND; ALSO POWER TO RAISE PORTIONS FOR CHILDREN; TO GRANT LEASES, AND OTHER USUAL POWERS.

- | | |
|---|---|
| 1. Parties.

2. Recital of intended marriage.

3. Testatum.

4. Limitation to trustees for 1,000 years.

5. To intended husband for life. | 6. Intended wife to receive a rent charge by way of jointure.

7. To first and other sons of marriage in tail, with remainder to daughters as tenants in common in tail with cross remainders between them.

8. Power to raise portions for children, to grant leases and other usual powers. |
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Parties.

1. ARTICLES OF AGREEMENT, indented and made the day of , BETWEEN (*intended husband*), of, &c., of the first part, (*intended wife*), of, &c., spinster, of the second part, (*trustees to uses*), of the third part, and (*trustees to term*), of the fourth part.

Recital of intended marriage.

2. WHEREAS a marriage hath been agreed upon, and is intended

to be shortly had and solemnized between the said (*intended husband*), and the said (*intended wife*.)

No. I.

Marriage
Articles settling
Estate of
intended
Husband to
himself for
Life; intended
Wife to
Receive Rent
Charges, &c.

Testatum.

3. NOW THESE PRESENTS WITNESS, that in consideration of the said intended marriage, it is hereby mutually declared and agreed that as soon as can be after the solemnization thereof, an indenture of settlement shall be made and executed, whereby ALL, &c. (DESCRIBE *parcels*), and all other the real estate of the said (*intended husband*), shall be conveyed, settled and assured, unto (*trustees to uses*), their heirs and assigns,

4. TO THE USE of the said (*trustees of term*), their executors, administrators and assigns, for the term of 1000 years, without impeachment of waste, upon the trusts hereinafter mentioned; and after the expiration of the said term, and in the meantime subject thereto,

Limitation of
trustees
for a term of
1000 years.

5. TO THE USE of the said (*intended husband*), and his assigns for the term of his natural life, without impeachment of waste; and after his decease,

To intended
husband for
life.

6. TO THE USE AND INTENT that the said (*intended wife*), in case she shall survive her said (*intended husband*), shall after his decease, receive the yearly rent-charge of £ , payable out of, and charged upon the said hereditaments and premises for her jointure, and in lieu of dower and thirds, free from all deductions payable to her by four equal quarterly payments, viz., Lady-day, Midsummer-day, Michaelmas-day, and Christmas-day, the first quarterly payment to be made on such of the said days as shall first happen after the decease of the said (*intended husband*); with powers of distress and entry for enforcing and securing the due payment thereof; and subject and chargeable as aforesaid,

Intended wife
to receive a
rent charge
by way of
jointure.

7. TO THE USE of the first and other sons of the said intended marriage successively in tail, and in default of such issue, TO THE USE of all and every the daughter and daughters of the said intended marriage as tenants in common in tail, with cross remainders between them, and in default of such issue, TO THE USE of the right heirs of the said (*intended husband*) for ever.

To first and
other sons of
marriage in
tail, with
remainder to
daughters as
tenants
in common in
tail with
cross remainder
between them.

No. I.

*Marriage
Articles settling
Estate of
intended
Husband to
himself for
Life; intended
Wife to
receive Rent
Charges, &c.*

*Power to raise
portions for
children, to
grant leases,
and other usual
powers
contained in
settlements.*

8. AND IT IS HEREBY FURTHER AGREED, that the said (*trustees of term*), and the survivor of them, his executors or administrators, either in the lifetime of the said (*intended husband*) and (*intended wife*), or of the survivor of them, with their, his or her consent in writing, or after the decease of such survivor, for said (*trustees*), or the survivor of them, his executors or administrators, by sale or mortgage of the said hereditaments and premises hereinbefore described, or a sufficient part thereof, for all or any part of the said term of 1000 years, to raise and levy for the portion of any child or children of the said intended marriage, not being an eldest son, the sum or sums of money hereinafter mentioned (that is to say), if there shall be only one child, not being an eldest son, the sum of £ ; and if there shall be two or more children, the sum of £ , to be divided between them if more than one, and to become vested at such ages, days, and times, and in such parts, shares and proportions as the said (*intended husband*) and (*intended wife*), shall, by deed, or as the survivor of them shall by deed or will appoint; and in default of such appointment, to become a vested interest in such child or children, being a son or sons, on his or their attaining the age of twenty-one years, or being a daughter or daughters, on attaining that age or marriage; and also with provisions for maintenance and advancement, as also of accruer, in case any of such children shall become an eldest son; and also with power for the said (*intended husband*), and all persons entitled as tenants in tail in possession of the said hereditaments and premises, to grant leases at rack rent for any term not exceeding twenty-one years in possession; and also with power for the trustees of the settlement to sell and exchange the said hereditaments and premises for other hereditaments and premises of the same nature; and also to invest any moneys arising from such sale or given for equality of exchange, that may from time to time remain unappropriated in their hands in real or government securities, with power to vary such securities, but upon trust for the benefit of the person or persons beneficially entitled to the said hereditaments and premises so to be purchased or taken in exchange as aforesaid; and also with power to appoint new trustees of such settlement, and all other usual powers contained in settlements of the like nature.

IN WITNESS, &c.

No. II.

AGREEMENT TO SETTLE FREEHOLD AND LEASEHOLD ESTATES THE PROPERTY OF THE INTENDED HUSBAND, TO THE USE OF THE INTENDED HUSBAND FOR LIFE; THE INTENDED WIFE TO RECEIVE A RENT CHARGE THEREOUT BY WAY OF JOINTURE; SUBJECT TO WHICH THE INTENDED HUSBAND IS TO HAVE A POWER OF APPOINTMENT AMONGST THE CHILDREN OF THE MARRIAGE; AND IN DEFAULT OF APPOINTMENT THE CHILDREN TO BE ENTITLED TO EQUAL SHARES OF THE WHOLE PROPERTY: THE SHARES OF SONS TO BECOME VESTED AT TWENTY-ONE, AND OF DAUGHTERS AT TWENTY-ONE OR MARRIAGE, WITH PROVISIONS FOR MAINTENANCE AND ADVANCEMENT IN THE MEANTIME.

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| <ol style="list-style-type: none"> 1. Parties. 2. Testatum by which freehold and leasehold estates are agreed to be settled. 3. To intended husband for life. 4. Power of appointment. | <ol style="list-style-type: none"> 5. To children of marriage equally; sons' shares to vest at twenty-one, and daughters' shares at twenty-one or marriage, with provisions for maintenance and advancement; power to grant leases, &c. |
|--|--|

1. ARTICLES OF AGREEMENT indented and made Parties.
the day of , BETWEEN (*intended husband*) of the first part,
(*intended wife*) of the second part, and (*two trustees*) of the third
part. [RECITE that marriage is intended, as in last precedent,
clause 2.]

2. NOW THESE PRESENTS WITNESS, and it is hereby declared Testatum, by
and agreed by and between the said parties hereto, that as soon which freehold
as conveniently may be after the said intended marriage, an and leasehold
indenture of settlement shall be made and executed, whereby, estates are
settled.
ALL (DESCRIBE *parcels*), and all and singular other the freehold

No. II.

Agreement to
settle Estates,
of intended
Husband to his
Use, the
intended Wife
to receive a
Rent Charge
thereout, &c.

To intended
husband.

Power of
appointment.

To children of
marriage
equally ; sons'
shares to vest
at twenty-one,
and daughters'
shares at
twenty-one or
marriage, with
provisions for
maintenance
and advance-
ment, power to
grant leases,
&c.

and leasehold hereditaments and premises of which the said (*intended husband*) is now seised or entitled to, shall be conveyed, settled, and assured unto the said (*trustees*), TO HOLD to them, their heirs, executors, administrators and assigns, according to the nature and quality of the premises.

3. TO THE USE of the said (*intended husband*) and his assigns for life without impeachment of waste, and after his decease [INSERT *limitation of rent-charge to wife, as in last precedent, clause 6*] and subject and chargeable as aforesaid,

4. TO THE USE of or in trust for all and every the children of the said intended marriage, in such shares and proportions as the said (*intended husband*) shall by deed or will appoint; and in default of such appointment :

5. TO THE USE of or in trust for all and every the children of the said intended marriage, who being a son or sons shall attain the age of twenty-one years, or who being a daughter or daughters shall attain that age or marry ; and their respective heirs, executors, administrators and assigns, according to the nature and quality of the said premises, in equal shares as tenants in common ; with power for the trustees or trustee for the time being of the said settlement to apply a competent portion of the annual income of the presumptive shares of the said children respectively in the said trust property, who shall not have acquired a vested interest therein, towards their maintenance, education and advancement in the world ; and also with full power for the said trustees or trustee to grant leases not exceeding twenty-one years at rack rent of all or any part of the said freehold and leasehold estates, or to sell or exchange the same ; and also to appoint new trustees of such settlement and all other usual powers.

IN WITNESS, &c.

No. III.

AGREEMENT TO SETTLE 4,000*l.* STOCK THE PROPERTY OF THE INTENDED WIFE, UPON TRUST TO PAY THE DIVIDENDS TO INTENDED HUSBAND FOR LIFE, THEN TO THE INTENDED WIFE FOR LIFE, IN CASE SHE SHALL SURVIVE HIM; WITH POWER OF APPOINTMENT AMONGST CHILDREN; AND IN DEFAULT THEREOF AMONGST CHILDREN EQUALLY; SONS' SHARES TO BECOME VESTED AT TWENTY-ONE, AND DAUGHTERS' SHARES AT TWENTY-ONE OR MARRIAGE; AND IN CASE THERE ARE NO CHILDREN, THE INTENDED HUSBAND OR INTENDED WIFE, WHICHEVER SHALL HAPPEN TO SURVIVE, TO TAKE THE WHOLE TRUST FUND.

- | | |
|--|---|
| <p>1. Parties.</p> <p>2. Testatum, whereby stock is agreed to be settled,</p> <p>3. UPON TRUST to pay dividends to intended husband for life, and then UPON TRUST for intended wife for life, in case she shall happen to survive him.</p> <p>4. Upon trust for children as intended husband, or intended wife, or survivor shall appoint.</p> | <p>5. Upon trust for children equally : sons' shares to vest at twenty-one, and daughters' shares at twenty-one or marriage.</p> <p>6. In case no children of marriage shall acquire a vested interest, in trust for intended husband or intended wife; whichever shall survive the other.</p> <p>7. Trustees to be empowered to vary securities,</p> |
|--|---|

1. ARTICLES OF AGREEMENT, &c. [DESCRIBE parties. Parties as in last precedent, clause 1, and then recite intended marriage, ut ante, No. I., clause 2, p. 650.]

2. NOW THESE PRESENTS WITNESS, and it is hereby declared, that as soon as conveniently may be after the said intended marriage, the capital sum of 4,000*l.* 3*l.* per cent. annuities, the property of the said (*intended wife*), and which has been recently transferred into the names of the said (*trustees*), shall by a proper

Testatum, whereby stock is agreed to be settled.

No. III.

Agreement to
settle 4,000l.
Stock, the
Property of
intended Wife,
upon Trust
to Pay the
Dividends to
intended
Husband for
Life; and
then to
intended Wife
for Life, &c.

Upon trust to
pay dividends
to intended
husband for
life, and then
upon trust for
intended wife
for life, if she
shall survive
him.

Upon trust for
children as
intended
husband and
intended wife
or survivor
shall appoint.

Upon trust for
children
equally: sons'
shares to vest
at twenty-one,
and daughters'
at twenty-one
or marriage.

In case no
children of
marriage shall
acquire a
vested interest,
upon trust for
intended
husband or
intended wife,
whichever shall
happen to
survive the
other.

Trustees to be
empowered to
vary securities.

deed of settlement, be settled and assured in such manner as that the same stock may become effectually vested in the said (*trustees*), their executors, administrators and assigns.

3. UPON TRUST to pay the dividends to the said (*intended husband*) for his life, and after his decease, to pay the same to the said (*intended wife*), in case she shall happen to survive him; and after the decease of such survivor,

4. UPON TRUST for the children of the said intended marriage, in such shares and proportions as the said (*intended husband*) and (*intended wife*), and notwithstanding her coverture, shall by deed, or as the survivor of them shall by deed or will appoint; and in default of such appointment,

5. UPON TRUST for all the children of the said intended marriage, who being a son or sons shall attain the age of twenty-one years, or who being a daughter or daughters shall attain that age or marry, in equal shares as tenants in common; and in case there shall be no children of the said intended marriage, then,

6. UPON TRUST for the survivor of them the said (*intended husband*) and (*intended wife*), his or her executors, administrators and assigns absolutely and for ever.

7. AND IT IS HEREBY FURTHER AGREED, that the said (*trustees*), and the survivor of them, his executors or administrators, shall be authorized and empowered to permit the said sum of 4,000l., 3l. per cent. annuities to remain in its present state of investment, or to sell out and invest the produce in any other of the public stocks or funds, or upon real or government securities, with power to vary securities, and also to appoint new trustees of such settlement, and all other usual powers.

IN WITNESS, &c.

No. IV.

MARRIAGE ARTICLES, BY WHICH ALL THE PRESENT AND FUTURE PROPERTY OF INTENDED WIFE IS AGREED TO BE SETTLED SO AS TO GIVE HER AN ABSOLUTE POWER OF APPOINTMENT, AND IN DEFAULT THEREOF, UPON TRUST, FOR HER SEPARATE USE FOR LIFE, WITH REMAINDER TO INTENDED HUSBAND FOR LIFE, BUT DETERMINABLE IN CASE OF HIS BECOMING BANKRUPT OR INSOLVENT: WITH LIMITATIONS TO THE ISSUE OF THE MARRIAGE IN EQUAL SHARES; SONS AT TWENTY-ONE, AND DAUGHTERS AT TWENTY-ONE OR MARRIAGE; WITH PROVISOS FOR MAINTENANCE, AND POWERS TO VARY SECURITIES, GRANT LEASES, SELL, EXCHANGE, APPOINT NEW TRUSTEES, &c. (a)

- | | |
|--|---|
| 1. Parties.

2. Testatum, by which all the present and future estate of intended wife is to be settled upon trust for her separate use for life, with an absolute power of appointment; with remainder to intended husband for life, with remainder to | children equally as tenants in common.

3. Trustees to be empowered to vary securities, grant leases, sell, exchange, appoint new trustees, &c.

4. Proviso for determining the life estate of intended husband, in case of his becoming bankrupt or insolvent. |
|--|---|

1. ARTICLES OF AGREEMENT. [DESCRIBE parties and Parties.
recite intended marriage, *ut ante*, No. II., clauses 1 and 2, p. 653.]

(a) An agreement in consideration of marriage to settle subsequently-acquired property will be good against creditors, and this notwithstanding the settlor was actually indebted at the time such agreement was entered into. The law upon this subject was fully entered into and discussed in the recent case of *Hardey v. Green* (14 L. T. 366.) In that case, by articles of settlement of the 29th June, 1843, entered into on the marriage of James Brookes Irwin and The beneficial interest in property agreed to be settled by marriage articles will not

No. IV.

*Marriage
Articles,
by which all the
present and
future Property
of intended
Wife is agreed
to be settled so
as to give her
an absolute
Power of
Appointment,
&c.*

Testatum by which all the present and future estate of intended wife is to be settled in trust for her separate use for life, with an absolute power of appointment, with remainder to her intended husband for life, with remainder to the children equally as tenants in common.

pass to the assignees of the settlor, notwithstanding he was insolvent at the time the articles were entered into.

2. NOW THESE PRESENTS WITNESS, that in consideration of the said intended marriage, and for making some provision for the said (*intended wife*) and the issue of the said intended marriage, it is

Elizabeth Beavan, it was declared, that as soon as conveniently might be, an indenture of settlement should be made and executed between the said J. B. Irwin and E. Beavan, &c. whereby all the real and personal property belonging to E. Beavan, or to which she might thereafter become entitled, should be conveyed to two trustees, their heirs, &c., to the use of and in trust for such persons, &c., as she Elizabeth Beavan should appoint by any deed or instrument in writing, or by her last will to be respectively executed by her in the presence of and attested by two or more credible witnesses; and in default of appointment, in trust for E. Beavan for life for her separate use; and after her decease, in trust for J. B. Irwin for life; and after his decease, in trust for the children of the marriage as therein mentioned. And the settlement was to contain a power to appoint new trustees, and other usual powers. And it was agreed that the settlement should also contain a covenant on the part of J. B. Irwin, "that all property, estate and effects, to which he or E. Beavan may hereafter become entitled, shall be settled and limited to the same uses, upon the same trusts, and for the same ends, intents and purposes as aforesaid." At the date of the articles, J. B. Irwin had not only no property, but was considerably in debt. On the 6th of November, 1843, he presented a petition to the Court of Bankruptcy for protection, and on the 2nd of January, 1844, a final order was made giving him protection, and vesting all his estate and effects in G. Green, the official assignee. The schedule, which was filed, stated the amount of his debts to be 4,000*l.*, to meet which he had no property whatever. On the 5th of December, 1845, E. V. Irwin, the brother of J. B. Irwin, died in India intestate, leaving J. B. Irwin his heir-at-law and one of his next-of-kin, in consequence of which J. B. Irwin became entitled to certain real estate in Ireland as heir, and to one-fifth of the personal estate as one of the next-of-kin. The legal estate in part of the realty having been outstanding in William Brooke, it was, by indenture of 6th of October, 1846, conveyed to J. B. Irwin; and by indenture of appointment of the 9th of October, 1846, in pursuance of a power for that purpose contained in the articles, E. Irwin appointed that part of the realty to the use of J. J. Hardey, a trustee, in the room of one of the trustees who had renounced, and the continuing trustee, their heirs and assigns, upon trust to sell and invest the proceeds upon the trusts of the articles. By another indenture of appointment of the 22nd of October, 1846, E. Irwin appointed the other part of the realty upon the like trusts. By indenture of settlement of the 24th of October, 1846, reciting the articles and the deeds of appointment, E. Irwin appointed to the same trustees, their executors, &c., all the residue of the moneys to arise from the sale of the realty, and the rents in the meantime, and all other moneys agreed to be settled; and J. B. Irwin assigned to the said trustees, their executors, &c., his share in his brother's personal estate, and all other his personal estate; and it was thereby declared, that the trustees should stand possessed of the trust moneys, in trust to pay a sum not exceeding 5,000*l.*, to E. Irwin, or to such person as she should appoint, and subject thereto, in trust for such persons, &c., as E. Irwin by any deed, &c. should appoint; and in default, in trust as therein mentioned. By an instrument of the 24th of October, 1846, E. Irwin, in exercise of a power reserved to her, appointed to S. B. Hamer, one of the trustees, in part discharge of the debts of J. B. Irwin, a third part of the purchase-money of the fee-simple estate; and by an indenture of the 6th of March, 1846, E. Irwin appointed that all the residue of the trust moneys should remain upon trust for such persons as she should appoint, and in default of appointment upon trust to pay the annual income of the said trust moneys and premises to E. Irwin for her life for her separate use, remainder to the children of E. Irwin by her then present or future husband, and in default of such

mutually declared and agreed by and between the said parties to these presents, that as soon as conveniently can be after the solemnization of the said intended marriage, an indenture of settlement shall be made and executed, whereby all the real and

No. IV.

*Marriage
Articles,
by which all the
present and
future Property
of intended
Wife is agreed
to be settled so
as to give her
an absolute
Power of
Appointment,
&c.*

children, then to her next-of-kin entitled by the Statute of Distributions. The fee-simple estate of which one-third was appointed to pay off J. B. Irwin's debts, being contracted to be sold, but the contract not being completed, G. Green, in February, 1847, gave notice to the trustees, to the purchaser, and to the personal representative of E. V. Irwin, that he, as official assignee, was entitled to the whole of the property to which J. B. Irwin became entitled on his brother's death; and in consequence of this notice the purchase was stopped, and the personal representative of E. V. Irwin refused to pay J. B. Irwin's share of the personalty. Mrs. Irwin, therefore, and J. J. Harder, one of her trustees, instituted the present suit, praying that the articles might be established, and consequent relief. Green, the first defendant on the record, submitted the construction of the articles and the operation of them, and of the other deeds to the judgment of the court; but he insisted that regard should be had to *the fact of J. B. Irwin being indebted* at the execution of the articles, and that the covenant would deprive him of all future property whatever, without any exception or reservation of income or otherwise. He submitted to the judgment of the court how far the covenant under the circumstances was a legal and effectual covenant against the creditors of J. B. Irwin, then, or afterwards, and whether it did or would extend to the income, as well as the *corpus* of the property claimed by the bill. In Ireland, deeds require to be registered, and registration requires the attestation of the witnesses; but there being no witnesses to the articles in June, 1846, the parties passed a dry pen over their signatures to them, and that was attested, and on that the registration took place. All the deeds were registered before the certificate of insolvency, which was also registered on the 15th of February, 1847.

After hearing the arguments on both sides, the Master of the Rolls said, "the statements on the bill are not such as to make a case to set aside this settlement for fraud, nor yet to reform its provisions; but it is said the wife is not to have the benefit of it. There is no evidence of fraud, nor any allegation on the bill to that effect. The question is, not whether the settlement be reasonable or unreasonable, though a good deal might be said by way of advice to persons entering into such contracts; but reasonableness or unreasonableness is not material, if the terms of the contract be such terms as the lady had a right to insist on before marriage. I thought at the commencement of the argument she had property, but it now seems she had not, and that neither of them had any; and an agreement was entered into that what either had or acquired should be settled and should be subject to her power of appointment, and in default of appointment to her separate use; she would not have married probably on any other terms, and the husband did marry subject to those terms, having, no doubt, confidence in his intended wife. I do not see that, however improvident the agreement may be, it is not one to be executed. No proof of fraud can be given, such as the law says parties who so marry shall not have the benefit of their agreements. The words of the articles as to the lady are 'entitled,' &c., and those as to the husband are 'become entitled;' and it is said that 'entitled' means the residue after payment of debts, but this cannot be maintained. The assignee has this property vested in him in trust for the objects of the settlement. It is said there was no attestation of the articles, and that it was necessary for registration in Ireland; but the officers there admitted the deed, and it is not invalid. I cannot defeat the wife's right under the articles. The suit is for the convenience of the trustees, and they, as well as the assignees, are to have their costs."

No. IV.

Marriage
Articles,
by which all the
present and
future Property
of intended
Wife is agreed
to be settled so
as to give her
an absolute
Power of
Appointment,
&c.

personal estates belonging to the said (*intended wife*), or of which she shall or may at any time hereafter become possessed of, or legally or equitably entitled to, shall be conveyed, settled and assured unto the said (*trustees*), TO HOLD to them, their heirs, executors, administrators and assigns, according to the respective natures and qualities of the said premises, TO THE USE of or in trust for such person or persons, and for such estate or estates, as the said (*intended wife*) shall from time to time, or at any time, and notwithstanding her coverture, by any deed or instrument in writing, or by her last will direct, limit or appoint, give or devise the same; and in default of such direction, limitation or appointment, gift or devise, IN TRUST for the said (*intended wife*) for and during the term of her natural life, without impeachment of waste, for her sole and separate use, free from the debts, control or engagements of the said (*intended husband*) or of any other husband or husbands with whom she may at any time intermarry; and from and immediately after her decease (but subject and determinable as hereinafter mentioned), IN TRUST for the said (*intended husband*), for and during the term of his natural life, without impeachment of waste; and from and immediately after his decease, IN TRUST for all and every the children of the said intended marriage, who being a son or sons shall attain the age of twenty-one years, or who, being a daughter shall attain that age or marry, and their respective heirs, executors, administrators and assigns, according to the nature and quality of the said premises, in equal shares as tenants in common, with power for the said (*trustees*) to apply a competent portion of the annual income of the presumptive shares of the said children respectively in the said trust property, who shall not have acquired a vested interest therein, towards their maintenance and education, or advancement in the world.

Trustees to be
empowered to
vary securities,
grant leases,
sell, exchange,
appoint new
trustees, &c.

3. AND IT IS HEREBY ALSO FURTHER AGREED, that the said (*trustees*) or the survivor of them, his executors or administrators, shall be empowered to invest the whole or any part of the said personal estate of the said (*intended wife*), upon real or government securities, or in or upon some of the public stocks and funds, with power, with the consent of the said (*intended wife*) during her life, and after her decease at the discretion of the said (*trustees*) or the survivor of them, his executors or administrators, to vary

all such securities, and also to grant leases not exceeding twenty-one years, at rack rent, of all or any part of the said real estates, or to sell or exchange the same; and also to appoint new trustees of such settlement, and all other usual powers.

4. PROVIDED ALWAYS, and it is hereby expressly declared, covenanted and agreed by and between all and every the said parties to these presents, that in case the said (*intended husband*) shall become a bankrupt, or take the benefit of any act for the relief of insolvent debtors, or commit or do any act, deed, matter, or thing whatsoever, whereby the rents and profits, interest, dividends and annual proceeds of the said trust estates, trust moneys and premises shall become vested in any other person or persons whosoever, THEN, and in such case, the estate for life so covenanted and agreed to be limited and assured to the use of, or in trust for the said (*intended husband*) as aforesaid, shall cease and determine in the same manner as if he were actually dead, and the person or persons entitled in remainder expectant on his decease, shall take and be entitled accordingly, in the same manner as if that event had actually taken place, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. (b)

IN WITNESS, &c.

No. IV.

Marriage
Articles,

by which all the
present and
future Property
of intended

Wife is agreed
to be settled so
as to give her
an absolute
Power of
Appointment,
&c.

Proviso for
determining the
life estate of the
husband, in case
of his becoming
bankrupt or
insolvent.

(b) A condition to determine an estate in the case of bankruptcy or insolvency may be annexed either to a devise, or a settlement of real or personal estate; but to be effectual, it must determine the whole estate; for it will not be permitted to avoid it in part, and leave it good as to the residue: (*Lockyear v. Savage*, 2 Str. 947; *Domett v. Bedford*, 3 Ves. 149; *Foley v. Burnell*, 1 Bro. C. C. 247; *Shee v. Hale*, 13 Ves. 394; *Brandon v. Robinson*, 18 ib. 429; *Cooper v. Wyatt*, 5 Mad. 482; 1 Hughes Pract. Sales, 376, 2nd edit.)

How a condition to determine an estate in case of bankruptcy or insolvency should be penned.

SECTION II.

MARRIAGE SETTLEMENTS.

No. I.—MARRIAGE SETTLEMENT, BY WHICH FREEHOLD ESTATES, THE PROPERTY OF THE INTENDED HUSBAND'S FATHER ARE SETTLED, AND UNDER WHICH INTENDED HUSBAND IS TO RECEIVE A RENT CHARGE DURING THE JOINT LIVES OF HIMSELF AND FATHER; A RENT CHARGE IS ALSO LIMITED TO THE INTENDED WIFE FOR HER JOINTURE, SUBJECT TO WHICH CHARGES THE PROPERTY IS LIMITED IN STRICT SETTLEMENT TO THE FATHER AND INTENDED HUSBAND SUCCESSIVELY FOR LIFE, WITH REMAINDER TO THE FIRST AND OTHER SONS OF INTENDED HUSBAND SUCCESSIVELY IN TAIL, WITH REMAINDER TO DAUGHTERS AS TENANTS IN COMMON IN TAIL, WITH CROSS REMAINDERS BETWEEN THEM. TRUSTS FOR THE MAINTENANCE OF CHILDREN OF MARRIAGE DURING THE LIFETIME OF INTENDED HUSBAND'S FATHER, AND FOR RAISING PORTIONS FOR CHILDREN, WITH PROVISOS FOR SURVIVORSHIP AND ACCRUER, AND POWER OF ADVANCEMENT. POWER FOR INTENDED HUSBAND TO SETTLE A RENT CHARGE ON ANY FUTURE WIFE OR WIVES, POWERS OF PARTITION, SALE, AND EXCHANGE, AND FOR TENANTS FOR LIFE OR IN TAIL TO GRANT LEASES.

No. II.—MARRIAGE SETTLEMENT, BY WHICH REAL ESTATES, THE PROPERTY OF THE INTENDED HUSBAND ARE CONVEYED TO TRUSTEES UPON TRUST TO SELL, AND TO INVEST THE PROCEEDS, AND TO PAY THE INCOME TO THE INTENDED HUSBAND FOR LIFE, WITH REMAINDER TO THE INTENDED WIFE IN CASE OF HER SURVIVING HIM, WITH POWER OF APPOINTMENT IN FAVOUR OF THE CHILDREN OF THE MARRIAGE, AND IN DEFAULT THEREOF TO BE DIVIDED AMONGST THE CHILDREN EQUALLY, WITH PROVISIONS FOR MAINTENANCE, POWER OF ADVANCEMENT, AND ALSO WITH POWER OF APPOINTMENT BY THE INTENDED HUSBAND, IN CASE NO CHILDREN OF THE MARRIAGE SHALL LIVE TO ACQUIRE A VESTED INTEREST IN THE TRUST MONEYS.

No. III.—SETTLEMENT BY WHICH COPYHOLD PREMISES, OF WHICH THE INTENDED HUSBAND IS SEISED IN FEE, ARE COVENANTED TO BE SUBRENDERED TO TRUSTEES UPON TRUST FOR THE INTENDED HUSBAND FOR LIFE, WITH REMAINDER TO THE INTENDED WIFE FOR LIFE, IN CASE OF HER SURVIVING HIM, WITH REMAINDER TO THE FIRST AND OTHER SONS OF THE INTENDED MARRIAGE SUCCESSIVELY IN TAIL, WITH REMAINDER TO DAUGHTERS AS TENANTS IN COMMON IN TAIL, WITH CROSS REMAINDERS BETWEEN THEM, WITH POWER TO RAISE PORTIONS FOR YOUNGER CHILDREN PROVISIONS FOR MAINTENANCE, AND POWER FOR TRUSTEES TO GRANT LEASES WITH THE LICENCE OF THE LORD; TO GIVE RECEIPTS, AND TO CHANGE TRUSTEES.

No. IV.—MARRIAGE SETTLEMENT, BY WHICH 4,000*l.* 3*l.* PER CENT. CONSOLIDATED ANNUITIES ARE SETTLED UPON TRUST FOR THE HUSBAND FOR LIFE, REMAINDER TO THE WIFE FOR LIFE IN CASE SHE SHOULD SURVIVE HIM, WITH REMAINDER TO CHILDREN OF THE MARRIAGE AS HUSBAND AND WIFE OR SURVIVOR SHALL APPOINT; AND IN DEFAULT THEREOF UPON TRUST FOR SONS AT TWENTY-ONE AND DAUGHTERS AT TWENTY-ONE OR MARRIAGE, WITH PROVISIONS FOR MAINTENANCE AND ADVANCEMENT; ALSO WITH ABSOLUTE POWER OF APPOINTMENT TO HUSBAND IN CASE OF THERE BEING NO CHILDREN; WITH SHORT FORM OF POWER TO CHANGE TRUSTEES. VARIATION, WHERE MONEY SECURED UPON MORTGAGE FORMS PART OF THE SUBJECT-MATTER OF THE SETTLEMENT.

No. V.—MARRIAGE SETTLEMENT, BY WHICH 500*l.* THE PROPERTY OF THE INTENDED WIFE, AND ADVANCED TO INTENDED HUSBAND, IS SECURED BY A POLICY OF ASSURANCE UPON HIS LIFE; 3,000*l.* STOCK IS ALSO SETTLED FOR THE BENEFIT OF HUSBAND AND WIFE AND THE ISSUE OF THE MARRIAGE; THE PROCEEDS OF THE POLICY OF ASSURANCE ARE ALSO SETTLED UPON THE SAME TRUSTS.

No. VI.—SETTLEMENT OF STOCK, WITH POWER FOR TRUSTEES TO ADVANCE ANY SUMS NOT EXCEEDING 2,000*l.* TO THE INTENDED HUSBAND UPON HIS EFFECTING A POLICY OF ASSURANCE TO THE AMOUNT OF THE SUMS ADVANCED, AND ASSIGNING THE SAME TO THE TRUSTEES OF THE SETTLEMENT.

No. VII.—SETTLEMENT BY WHICH A BOND DEBT, A DEBT DUE ON A PROMISSORY NOTE, AND ALSO A SIMPLE CONTRACT DEBT, ARE ASSIGNED TO TRUSTEES UPON THE TRUSTS OF THE SETTLEMENT.

No. VIII.—SETTLEMENT BY WHICH TWELVE SHARES IN THE GREAT WESTERN RAILWAY, THE PROPERTY OF THE INTENDED HUSBAND, AND A LEGACY OF 1,500*l.* THE PROPERTY OF THE INTENDED WIFE, ARE TRANSFERRED TO TRUSTEES UPON THE TRUSTS OF THE SETTLEMENT, THE INTENDED HUSBAND COVENANTING TO SECURE THE INTENDED WIFE THE SUM OF 1,500*l.* IN CASE OF HER SURVIVING HIM.

No. IX.—SETTLEMENT BY WHICH 2,000*l.* THE PROPERTY OF THE INTENDED WIFE'S FATHER IS SETTLED UPON THE TRUSTS OF THE SETTLEMENT, THE INTENDED HUSBAND COVENANTING TO SETTLE AN ANNUITY OF 150*l.* UPON INTENDED WIFE.

No. X.—SETTLEMENT BY WHICH AN ANNUITY OF 349*l.*, THE PROPERTY OF THE INTENDED WIFE, SECURED UPON A REVERSIONARY INTEREST IN TRUST MONIES, IS SETTLED UPON SUCH TRUSTS AS SHE SHALL APPOINT; AND IN DEFAULT OF APPOINTMENT UPON SUCH TRUSTS FOR HER SEPARATE USE.

No. XI.—SETTLEMENT BY WHICH INTENDED WIFE (A WIDOW) SETTLES THE INTEREST OF TRUST MONIES TO WHICH SHE IS ENTITLED UNDER A FORMER MARRIAGE SETTLEMENT, AND APPOINTS THE PRINCIPAL BETWEEN HER THREE CHILDREN (A SON AND TWO DAUGHTERS BY A FORMER HUSBAND.) THE SUM OF 3,500*l.* TO WHICH SHE IS ENTITLED UNDER HER DECEASED FATHER'S WILL IS SETTLED FOR HER SEPARATE USE FOR LIFE, WITH AN ABSOLUTE POWER OF APPOINTMENT; AND IN DEFAULT THEREOF UPON TRUST TO PAY THE INTEREST TO INTENDED HUSBAND FOR

LIFE IN CASE OF HIS SURVIVING HER, AND AFTER THE DECEASE OF SURVIVOR, ONE MOIETY TO BE UPON THE SAME TRUSTS AS THEREINBEFORE DECLARED IN FAVOUR OF THE ISSUE OF INTENDED MARRIAGE, AND THE OTHER MOIETY IN FAVOUR OF THE ISSUE OF THE FORMER MARRIAGE.

No. XII.—SETTLEMENT BY WHICH 1,000*l.* SECURED BY THE BOND OF THE INTENDED WIFE'S FATHER, IS SETTLED UPON TRUST FOR INTENDED HUSBAND AND WIFE, AND THE ISSUE OF THE INTENDED MARRIAGE.

No. XIII.—MARRIAGE SETTLEMENT, BY WHICH 2,000*l.* WHICH THE INTENDED WIFE TAKES UNDER POWER OF APPOINTMENT PAYABLE TO HER UPON HER MOTHER'S DECEASE, IS SETTLED TO HER SEPARATE USE FOR LIFE WITH AN ABSOLUTE POWER FOR HER TO APPOINT THE PRINCIPAL AFTER HER DECEASE, AND IN DEFAULT OF APPOINTMENT, UPON TRUST FOR THE ISSUE OF THE MARRIAGE IN EQUAL SHARES; THE INTENDED WIFE'S MOTHER ALSO GRANTS AN ANNUITY OF 100*l.* DURING HER LIFE, TO BE HELD UPON THE SAME TRUSTS.

No. I.

MARRIAGE SETTLEMENT, BY WHICH FREEHOLD ESTATES, THE PROPERTY OF THE INTENDED HUSBAND'S FATHER, ARE SETTLED, AND UNDER WHICH THE INTENDED HUSBAND IS TO RECEIVE A RENT-CHARGE DURING THE JOINT LIVES OF HIMSELF AND FATHER. A RENT-CHARGE IS ALSO LIMITED TO THE INTENDED WIFE FOR HER JOINTURE, SUBJECT TO WHICH CHARGES THE PROPERTY IS LIMITED IN STRICT SETTLEMENT TO THE FATHER AND INTENDED HUSBAND, SUCCESSIVELY FOR LIFE, WITH REMAINDER TO THE FIRST AND OTHER SONS BY THE INTENDED HUSBAND SUCCESSIVELY IN TAIL, WITH REMAINDER TO HIS DAUGHTERS AS TENANTS IN COMMON IN TAIL, WITH CROSS REMAINDERS BETWEEN THEM. TRUSTS FOR THE MAINTENANCE OF CHILDREN DURING THE LIFETIME OF INTENDED HUSBAND'S FATHER; AND FOR RAISING PORTIONS FOR CHILDREN; WITH PROVISOS FOR SURVIVORSHIP AND ACCRUER. POWER OF ADVANCEMENT. POWER FOR HUSBAND TO SETTLE A RENT-CHARGE ON ANY FUTURE WIFE OR WIVES. POWERS OF PARTITION, SALE AND EXCHANGE; AND FOR TENANTS FOR LIFE, OR IN TAIL, TO GRANT LEASES.

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| 1. Parties. | 8. Power of distress. |
| 2. Recital of intended marriage, and of agreement for settlement. | 9. Power of entry. |
| 3. Testatum. | 10. Further declaration of the uses of the settled property. |
| 4. Habendum. | 11. To trustees for a term of 500 years. |
| 5. To the use of intended husband's father until the marriage. | 12. Limitation to the use of father for life without impeachment of waste. |
| 6. Limitation of rent-charge to intended husband during the joint lives of himself and his father. | 13. To trustees to preserve contingent remainders. |
| 7. Similar limitation to intended wife in case of her surviving her intended husband. | 14. To the use of intended husband for life without impeachment of waste. |

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| <p>15. To trustees to preserve contingent remainders.</p> <p>16. To the use of trustees for 1000 years.</p> <p>17. Limitation to the use of the first son of intended marriage in tail with remainder.</p> <p>18. To the use of the second and subsequently born son and sons of marriage in tail.</p> <p>19. To the use of the first son of intended husband by any future marriage in tail.</p> <p>20. To the use of the second and subsequently born son and sons by any future marriage in tail male.</p> <p>21. To use of daughters of intended marriage as tenants in common in tail, with cross limitations between them.</p> <p>22. To the use of daughters of intended husband by any future marriage as tenants in common in tail, with cross limitations between them; with the ultimate remainder,</p> <p>23. To the use of the father of intended husband in fee.</p> <p>24. Declaration of the trusts of the 500 years' term.</p> <p>25. Upon trust to secure the two rent charges thereinbefore limited.</p> <p>26. Trust for maintenance of children of the marriage during the lifetime of the intended husband's father.</p> <p>27. Proviso for survivorship and accruer.</p> <p>28. Trustees to permit persons entitled in reversion to receive the surplus rents and profits.</p> <p>29. Proviso for cessor of term.</p> <p>30. Declaration of trust of 1000 years' term.</p> | <p>31. To raise portions for younger children.</p> <p>32. Proviso that no sale or mortgage shall be effected for the purpose of raising portions for younger children in the lifetime of intended husband's father without the written consent of the latter.</p> <p>33. Hotch-pot clause.</p> <p>34. Further trusts for maintenance and education of younger children.</p> <p>35. Provisoes for survivorship and accruer.</p> <p>36. Power of advancement.</p> <p>37. Persons entitled in reversion to receive the surplus rents and profits.</p> <p>38. Sums advanced to children for their advancement shall be deemed a satisfaction of their portions <i>pro tanto</i>.</p> <p>39. Intended husband empowered to settle a jointure on any future wife.</p> <p>40. Powers of partition, sale or exchange.</p> <p>41. To revoke old uses, and to give receipts.</p> <p>42. Trustees to invest moneys arising from sale, or given for equality of partition in the purchase of other lands, to be settled to the same uses as before limited.</p> <p>43. Until an eligible purchase can be found, purchase moneys to be invested at interest.</p> <p>44. Power to grant leases.</p> |
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Additional Clauses.

- A. Trust for raising an annual sum for wife by way of pin money.
- B. Proviso for preventing the accumulation of great arrears of pin money.

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
 BETWEEN (*intended husband's father*) of, &c., of the first part,
 (*intended husband*) of, &c., of the second part, (*intended wife*) of,
 &c., of the third part, (*trustees of settlement*) of, &c., of the fourth

part, (*trustees of 500 years' term*) of, &c., of the fifth part, and (*trustees of 1,000 years' term*) of the sixth part.

No. I.

*Marriage
Settlement, by
which Freehold
Estates are
settled, &c.*

2. WHEREAS a marriage hath been agreed upon, and is intended to be shortly solemnized, between the said (*intended husband*), and (*intended wife*), in consideration of which the said (*father*) hath agreed that all and singular the manor, messuages, hereditaments, and premises hereafter described, with their appurtenances, the property of the said (*father*), shall be conveyed, limited and assured TO THE USES, upon the trusts, and for the ends, intents and purposes, and with, under and subject to the powers, provisoes, charges, declarations and agreements hereinafter limited, declared and contained.

*Recital of
intended
marriage, and
of agreement
for settlement.*

3. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, in consideration of the said intended marriage, and also in consideration of the sum of five shillings, paid by the said (*trustees of settlement*) to the said (*father*) on the execution hereof, the receipt of which is hereby acknowledged, HE the said (*father*) DOTH by these presents, grant, release and confirm unto the said (*trustees of settlement*), and their heirs, ALL, &c. (*DESCRIBE parcels, AND INSERT general words*); AND all the estate, right, title and interest, both legal and equitable, of him the said (*father*) therein.

Testatum.

4. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*trustees of settlement*) their heirs and assigns for ever, TO THE USES, upon the trusts, and for the ends, intents and purposes, and with, under and subject to the powers, provisoes, charges, declarations and agreements hereinafter limited, declared and contained, of and concerning the same (that is to say),

Habendum.

5. TO THE USE of the said (*father*) and his heirs until the solemnization of the said intended marriage, and immediately after the solemnization thereof,

*To the use of
the husband's
father until
the marriage.*

6. TO THE USE and intent that the said (*intended husband*) and

*Limitation of
rent-charge to*

No. I.

*Marriage
Settlement, by
which Freehold
Estates are
settled, &c.*

intended
husband during
the joint lives
of himself and
his father.

his assigns shall, during the joint lives of himself and the said (*father*), receive the yearly rent-charge or annual sum of 1,000*l.* sterling, to be issuing and payable out of, and charged and chargeable upon the said manor and hereditaments hereby granted and released, free from all deductions (except the present or any future tax on property or income), and payable to him by four equal quarterly payments, on the twenty-fifth day of December, the twenty-fifth day of March, the twenty-fourth day of June, and the twenty-ninth day of September; the first payment thereof to be made on such of the said days of payment as shall first happen after the solemnization of the said intended marriage.

Similar
limitation to
intended wife
in case of her
surviving
intended
husband.

7. AND TO THIS FURTHER USE AND INTENT, that the said (*intended wife*) in case she shall happen to survive the said (*intended husband*), and her assigns shall, from and after his decease, yearly and every year during the then remainder of her natural life, receive the yearly rent-charge or annual sum of 500*l.* sterling, to be issuing and payable out of, and charged and chargeable upon the said manor and hereditaments, free from all deductions (except the present or any future tax on property or income) to be in full, for the jointure of the said (*intended wife*), and in bar and satisfaction of her dower or thirds out of any property, whether real or personal, to which the said (*intended husband*) now is, or at any time during the coverture shall be seised, possessed of, or entitled to and payable to her by four equal quarterly payments on the several days hereinbefore mentioned, the first quarterly payment thereof to be made on such of the said days as shall first happen after the decease of the said (*intended husband*.)

Power of
distress.

8. AND TO THIS FURTHER USE AND INTENT, that in case any quarterly payment of the said yearly rent-charges or annual sums of 1,000*l.* or 500*l.*, or either of them, or any part or parts thereof, shall be at any time or times in arrear and unpaid for the space of fourteen days next after any of the said days whereon the same ought to be paid as aforesaid, THEN and in such case, and so often as the same shall happen, it shall be lawful for the person or persons for the time being entitled to the said yearly rent-charges or annual sums, the quarterly payments whereof shall be so in arrear as aforesaid, into and upon all and singular the said manor,

hereditaments and premises, or any part of the same to enter, and then and there to distrain and dispose of the distress and distresses then and there found in due course of law; in like manner as in the case of distresses taken for rent, reserved by common demise. TO THE INTENT that thereby and therewith, the said yearly rent-charges or annual sums of 1,000*l.* and 500*l.*, and every part thereof so in arrear, and all costs incurred by reason of the nonpayment thereof, may be fully satisfied.

No. 1.

Marriage
Settlement, by
which Freehold
Estates are
settled, &c.

9. AND TO THIS FURTHER USE AND INTENT, that in case any ^{Power of entry.} quarterly payments of the said yearly rent-charges or annual sums of 1,000*l.* and 500*l.*, or either of them, or any part thereof, shall at any time or times be in arrear and unpaid for the space of twenty-one days next after any of the days whereon the same ought to be paid as aforesaid, THEN, and in such case, and so often as the same shall happen (although no formal or legal demand shall be made), (a) it shall be lawful for the person or persons for the time being entitled to the said yearly rent-charges or annual sums, the quarterly payments whereof shall be so in arrear as aforesaid, into and upon all and singular the said manor, hereditaments and premises, or into and upon any part thereof in the name of the whole to enter, and the same with the appurtenances to hold and enjoy, and the rents, issues and profits thereof to receive and take to and for his, her and their own use and benefit, until he, she, or they shall thereby or therewith, or otherwise, be fully paid and satisfied the said yearly rent-charges or annual sums so behind and unpaid, and all arrears thereof due at such time of entry, or thereafter to become due during the time that he, she, or they shall, by virtue of such entry or entries, be in possession of the said hereditaments and premises, together with all costs incurred by reason of the nonpayment thereof; such possession when taken to be without impeachment of waste.

10. AND AS TO, FOR AND CONCERNING the said manor, hereditaments and premises hereby granted and released from and immediately after the solemnization of the said intended marriage ^{Further declaration of the uses of the settled property.}

(a) It seems that a grantor of a rent-charge would have a right of entry, notwithstanding the words dispensing with the demand were omitted: (*Doe v. Horsley*, 3 Nev. & Man. 567.) ^{Practical observations.}

No. I.

*Marriage
Settlement, by
which Freehold
Estates are
settled, &c.*

(chargeable with the said two several yearly rent-charges or annual sums of 1,000*l.* and 500*l.*, or such of them as according to events shall be payable for the time being as aforesaid, and the several powers and remedies for securing and enforcing the payment of the same),

To trustees for
a term of 500
years.

11. TO THE USE of the said (*trustees of term*), their executors, administrators, and assigns, for the term of 500 years thence next ensuing, without impeachment of waste, UPON THE TRUSTS, and for the ends, intents and purposes hereinafter declared; and immediately after the expiration or sooner determination of the said term, and in the meantime subject thereto,

Limitation to
the use of
father for life
without
impeachment
of waste.

12. TO THE USE of the said (*father*) and his assigns during the term of his natural life, without impeachment of waste; and immediately after the determination of that estate by any means in his lifetime,

To trustees
to preserve
contingent
remainders.

13. TO THE USE of the said (*trustees of settlement*), and their heirs, during the life of the said (*father*), UPON TRUST, to preserve the contingent uses and estates hereinafter limited; but nevertheless to permit and suffer the said (*father*) and his assigns during his life to receive and take the rents, issues and profits of the said manor, hereditaments and premises, to and for his and their own use and benefit; and immediately after his decease,

To the use of
intended
husband for
life without
impeachment
of waste.

14. TO THE USE of the said (*intended husband*) and his assigns during the term of his natural life, without impeachment of waste; and immediately after the determination of that estate by any means in his life-time,

To trustees
to preserve
contingent
remainders.

15. TO THE USE of the said (*trustees of settlement*), and their heirs during the life of the said (*intended husband*), UPON TRUST to preserve the contingent uses and estates hereinafter limited; but nevertheless to permit and suffer the said (*intended husband*), and his assigns, during his life, to receive and take the rents, issues and profits of the said manor, hereditaments and premises, to and for his and their own use and benefit; and immediately after the decease of the survivor of them the said (*father*), and (*intended husband*),

16. To THE USE of the said (*trustees of 1,000 years' term*), their executors, administrators and assigns, for the term of 1,000 years thence next ensuing, without impeachment of waste, upon the trusts, and for the ends, intents and purposes; hereinafter declared and after the expiration or sooner determination of the said term of 1,000 years, and in the meantime subject thereto,

No. 1.

Marriage
Settlement, by
which Freehold
Estates are
settled, &c.

To the use of
trustees for
1,000 years.

17. To THE USE of the first son of the said (*intended husband*) on the body of the said (*intended wife*), and the heirs of the body of such first son; and in default of such issue,

Limitations
to the use of
the first son of
intended
marriage in
tail, with
remainder,

18. To THE USE of the second, third, fourth, fifth, sixth, and every other the son and sons of the said (*intended husband*) on the body of the said (*intended wife*), successively, in remainder one after another as they shall be in priority of birth, and of the several and respective heirs of the body and bodies of all and every such son and sons, the elder of such sons and the heirs of his body being always to take before the younger of such sons and the heirs of his and their body and respective bodies; and for default of such issue,

To the use of
the second and
subsequently
born son and
sons of marriage
in tail;
with remainder,

19. To THE USE of the first son of the said (*intended husband*) on the body of any other wife or wives, and the heirs of the body of such first son; and for default of such issue,

To the use of
the first son of
the intended
husband by any
future marriage
in tail; with
remainder,

20. To THE USE of the second, third, fourth, fifth, sixth and all and every other the son and sons of the said (*intended husband*) on the body of any such other wife or wives, successively in remainder one after another as they shall be in priority of birth, and of the several heirs of the body and bodies of all and every such son and sons, the elder of such sons and the heirs of his body being always to take before the younger of such sons and the heirs of his and their body and respective bodies; and for default of such issue,

To the use of
the second and
subsequently
born son, and
sons by any
future marriage
in tail,
with remainder,

21. To THE USE of all and every the daughter and daughters of the said (*intended husband*) on the body of the said (*intended wife*), in equal shares as tenants in common, and of the several and respective heirs of the body and bodies of all and every such

To the use of
daughters of
intended
marriage as
tenants in
common in tail
with cross

No. I.

*Marriage
Settlement, by
which Freehold
Estates are
settled, &c.*

limitations
between them ;
with remainder,

daughter and daughters: and in case there shall be a failure of issue of any one or more of such daughter or daughters (in case there shall be more than one such daughter), then as well the original share or shares, as the share or shares surviving or accruing to such last-mentioned daughter or daughters, or her or their issue, by virtue of this present provision of cross limitations, shall go and remain TO THE USE of the other and others the daughter and daughters of the said (*intended husband*) on the body of the said (*intended wife*), if more than one, in equal shares as tenants in common, and the heirs of their respective bodies; and if all such daughters but one shall die without issue, or if there shall be originally but one such daughter, *then* TO THE USE of such surviving or only daughter and the heirs of her body; and for default of such issue,

To the use of
daughters of
intended
husband by
any future
marriage as
tenants in
common in tail
with cross
limitations
between them ;
with the
ultimate
remainder,

22. TO THE USE of all and every the daughter and daughters of the said (*intended husband*) on the body of any other wife or wives, in equal shares as tenants in common, and of the several and respective heirs of the body of all and every such daughter and daughters; and in case there shall be a failure of issue of any one or more of such daughter or daughters, then as well the original share or shares, as the share or shares surviving or accruing to such last-mentioned daughter or daughters, or her or their issue, by virtue of this present provision of cross limitations, shall go over and remain TO THE USE of the other and others the daughter and daughters of the said (*intended husband*) on the body of any such other wife or wives, if more than one, in equal shares, as tenants in common, and the heirs of their respective bodies; and if all such daughters but one shall die without issue, or if there shall originally be but one such daughter, *then* TO THE USE of such surviving or only daughter, and the heirs of her body; and for default of such issue,

To the use of
the father of
intended
husband in fee.

23. TO THE USE of the said (*father*), his heirs and assigns for ever.

Declaration of
the trusts of the
500 years' term.

24. AND AS TO, FOR AND CONCERNING the said term of 500 years hereinbefore limited to the said (*trustees of 500 years' term*), as aforesaid, it is hereby declared that the same term is so

limited upon the trusts, and for the ends, intents and purposes hereinafter declared: (that is to say,) (b)

No. 1.

Marriage Settlement, by which Freehold Estates are settled, &c.

(b) If the intended wife is to have an annual sum by way of pin-money, insert here:—

A. UPON TRUST that the said (*trustees of 500 years' term*), and the survivor of them, his executors or administrators, do and shall yearly and every year of the said term, during the joint lives of the said (*intended husband*) and (*intended wife*), by and out of the rents, issues and profits of the said manor, messuages, hereditaments and premises, or by demising, leasing, selling, or mortgaging the same, or any of them, for all or any part of the said term, or by bringing actions against the tenants or occupiers of the same premises, or any of them, for the rents then in arrear, or by such other ways or means as to the trustees or trustee of the said term for the time being shall seem expedient, raise and levy the annual sum of £ sterling, and pay the same by four equal quarterly payments on the said several days herein beforementioned without deduction, unto such person or persons only as the said (*intended wife*) shall, notwithstanding her coverture, from time to time, after the same shall become due, but not by way of anticipation, by any writing under her hand appoint; and in the mean time, and until such appointment, do and shall from time to time pay the said annual sum of £ or so much thereof of which no such appointment as aforesaid shall have been made, into the proper hands of the said (*intended wife*), for her sole and separate use, free from the debts, control, or engagements of the said (*intended husband*), her receipts alone being a sufficient discharge for the same; the first quarterly payment to be made on such of the said days as shall first happen after the solemnization of the said intended marriage.

Trust for raising an annual sum for intended wife by way of pin money.

B. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED that in order to prevent the incurring of any large arrears of the said yearly sum of £ the said hereditaments and premises comprised in the said term shall not be charged or liable for, neither shall the trustees or trustee for the time being of the said term, levy, raise, or recover at any one time, more than one year and a-half's arrears

Proviso for preventing the accumulation of great arrears of pin money.

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*Marriage
Settlement, by
which Freehold
Estates are
settled, &c.*

Upon trust to
secure the two
rent-charges
thereinbefore
limited.

25. UPON TRUST that if any quarterly payment of the said yearly rent-charges or annual sums of 1,000*l.* and 500*l.*, or either of them, or any part or parts thereof, shall be at any time or times in arrear and unpaid for the space of forty days next after any of the said days whereon the same ought to be paid as aforesaid, THEN and in such case, and so often as the same shall happen (although no formal or legal demand shall be made), the said (*trustees of five hundred years' term*), and the survivor of them, his executors or administrators, do and shall from time to time, by and out of the rents, issues and profits of the said manor, messuages, hereditaments and premises comprised in the said term of 500 years, or by demising, leasing, selling or mortgaging the same premises, or any of them, for all or any part of the said term, or by bringing actions against the tenants or occupiers of the same premises, or any of them, for the rents then in arrear, or by such other ways or means as to them or him shall seem expedient, raise and levy such sum and sums of money as shall be sufficient from time to time to satisfy such arrears of the said yearly rent-charges or annual sums of 1,000*l.* and 500*l.*, or either of them, or so much thereof as shall from time to time happen to be in arrear and unpaid; together with all losses, damages, costs and expenses which the said (*trustees of five hundred years' term*), or the survivor of them, his executors or administrators, and the person or persons for the time being entitled to such arrears as aforesaid, shall sustain, expend or be put unto for or by reason of the nonpayment of the said yearly rent-charges or annual sums of 1,000*l.* and 500*l.*, or either of them, or any part of the same, at the days and times hereinbefore appointed for the payment thereof, and do and shall pay, apply and dispose of the same moneys accordingly.

Trust for
maintenance of
children of the
marriage during
the lifetime of

26. AND UPON FURTHER TRUST, that in case the said (*intended husband*) shall die in the lifetime of the said (*father*), and there shall be one or more child or children of the said (*intended husband*)

of the said yearly sum of £ so in arrear previously to the raising, levying, or proceeding to recover thereof, beyond the actual costs incurred by reason of the nonpayment of the same."

on the body of the said (*intended wife*) to be begotten, born in his lifetime, or in due time afterwards, THEN the said (*trustees of 500 years' term*), and the survivor of them, his executors or administrators, shall, during the then remainder of the life of the said (*father*) (subject nevertheless and without prejudice to the raising and paying the yearly rent-charge or annual sum of 500*l.*, and the powers and remedies for securing and enforcing payment of the same as aforesaid), by and out of the rents and profits of the said manor, messuages, hereditaments and premises comprised in the said term of 500 years, levy and raise for the maintenance and education of such child or children the yearly sum or sums herein-after mentioned: (that is to say,) in case there shall be but one child, then the yearly sum of 100*l.* sterling, and in case there shall be two such children and no more, the yearly sum of 150*l.* sterling, to be divided between them in equal shares; and in case there shall be three or more such children, then the yearly sum of 200*l.* sterling to be divided between them in equal shares; and do and shall at their or his discretion, either themselves apply such sum or sums of money towards the maintenance and education of such child or children, or pay the same to the guardian or guardians for the time being of such child or children, for the purpose of the maintenance and education of such child or children respectively, and to be paid by four equal quarterly payments on the days of payment before mentioned, with respect to the said rent-charges or annual sums hereinbefore limited; the first payment thereof to be made on such of the said days as shall first happen after the decease of the said (*intended husband*) dying in the lifetime of the said (*father*) as aforesaid.

No. 1.

Marriage
Settlement, by
which Freehold
Estates are
settled, &c.

the intended
husband's
father.

27. PROVIDED ALWAYS, that in case any of the said children who shall become entitled under the provision for maintenance hereinbefore contained shall afterwards die in the lifetime of the said (*father*), then the share of each child, who shall so die, in such provision for maintenance, shall immediately become vested in the survivors and survivor of them in augmentation of their, his or her original share or shares; but so nevertheless that in the aforesaid provision for maintenance the share of no one child shall exceed the annual sum of 100*l.*, nor for two such children the yearly

Proviso for
survivorship
and accretion,
and subject as
aforesaid,

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*Marriage
Settlement, by
which Freehold
Estates are
settled, &c.*

Trustees to
permit persons
entitled in
reversion to
receive the
surplus rents
and profits.

sum of 150*l.* between them; and subject and chargeable as last aforesaid,

28. UPON TRUST that they the said (*trustees of 500 years' term*), and the survivor of them, his executors or administrators, do and shall permit and suffer the person or persons entitled in reversion immediately expectant on the said term of 500 years, to receive and take the surplus rents and profits of the said manor, messuages, hereditaments and premises, which shall not be applied in the execution of the trusts hereby declared.

Proviso for
cesser of term.

29. PROVIDED ALWAYS, that when the trusts hereinbefore declared of the said term of 500 years shall have been performed, or become unnecessary or incapable of taking effect, and all costs incurred in and about the execution thereof discharged, then such term of 500 years as to such part of the said hereditaments and premises as shall remain undisposed of for the purposes aforesaid, shall cease.

Declaration of
trust of 1000
years' term.

30. AND AS TO, FOR AND CONCERNING the said term of 1,000 years hereinbefore limited to the said (*trustees of 1,000 years' term*), their executors, administrators and assigns as aforesaid, it is hereby declared that the same is so limited to them UPON THE TRUSTS and for the ends, intents and purposes hereinafter declared: (that is to say),

To raise
portions for
younger
children.

31. UPON TRUST in case there shall be any child or children of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, other than the eldest or only son for the time being entitled under the limitations hereinbefore contained to the said manor, hereditaments and premises, for an estate tail in possession or remainder immediately expectant on the decease of the survivor of the said (*father*) and (*intended husband*), THEN that they the said (*trustees of 1,000 years' term*), and the survivor of them, his executors or administrators, do and shall, either in the lifetime of the said (*intended husband*), with his consent in writing, or not until after his decease (but subject and without prejudice to the life estate of the said (*father*) and to the said yearly rent-charge

or annual sum of 500*l.* hereinbefore limited to the said (*intended wife*) for her life), by sale or mortgage of the said manor, hereditaments and premises comprised in the said term of 1,000 years, or of a competent part thereof, for all or any part of such term levy and raise for the portion of such child (not being an eldest or only child entitled as aforesaid), if there shall be only one such younger child, the sum of 2,000*l.* sterling, to be paid and become vested in such one child at such age, day or time as the said (*intended husband*), by any deed or deeds, with or without power of revocation and new appointment, or by his last will, or any codicil or codicils annexed thereto, shall appoint; and in default of such appointment, to become a vested interest in such child, being a younger son, on his attaining the age of twenty-one years, or being a daughter, on her attaining that age or marriage, and to be paid to him or her at that age or time accordingly, if the same shall happen after the decease of the said (*intended husband*), but if the same shall happen in his lifetime, then the same shall not be paid until after his decease, unless by writing under his hand he shall direct the same to be raised and paid in his lifetime. AND if there shall be two or more such children (not being an eldest or only son entitled as aforesaid), the sum of 4,000*l.* sterling, for the portion of such two or more children to be paid and become vested in them at such ages, days or times as the said (*intended husband*), by any deed or deeds, with or without power of revocation and new appointment, or by his last will, or any codicil or codicils annexed thereto, shall appoint; and in default of such appointment, to be equally divided between such children in equal shares, and to become vested interests in such of them as shall be sons, on their respectively attaining the age of twenty-one years, and in such of them as shall be daughters, on her or their attaining that age or marriage, and to be paid at or upon the same ages, days or times accordingly, if the same shall happen after the decease of the said (*intended husband*); but if the same shall happen in his lifetime, then the same shall not be paid until after his decease, unless by writing under his hand he shall direct the same to be raised and paid in his lifetime.

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Settlement, by
which Freehold
Estates are
settled, &c.

32. PROVIDED ALWAYS, that no sale or mortgage shall be made of the said manor, hereditaments and premises, for the raising of

Provido that no
sale or mortgage
shall be effected

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Settlement, by
which Freehold
Estates are
settled, &c.*

for the purpose
of raising
portions for
younger
children in the
lifetime of
intended
husband's
father, without
the written
consent of the
latter.

Hotchpot
clause.

such portion or portions as aforesaid in the lifetime of the said (*father*), unless with his consent testified in writing under his hand.

33. PROVIDED ALSO, that in case any appointment shall be made in exercise of the aforesaid powers, or either of them, which shall only include a part of the sum or sums of money intended for the portion or portions of such child or children (not being an eldest or only child entitled as aforesaid), such appointment shall be valid notwithstanding the non-appointment of such remaining parts or portions; but in such case no child entitled to a portion under such appointment shall be entitled to any further share in the unappointed parts of the moneys intended for portions, until he, she or they shall have brought his or her appointed share into hotchpot, and shall account for the same accordingly, unless the said (*intended husband*) shall declare the contrary by writing under his hand.

Further trusts
for maintenance
and education
of younger
children.

34. AND UPON FURTHER TRUST that the said (*trustees of 1,000 years' term*), and the survivor of them, his executors or administrators, do and shall from time to time, from and after the decease of the said (*intended husband*), until such portion or portions shall become payable (but subject and without prejudice as aforesaid), apply so much of the rents and profits of the said manor, messuages, hereditaments and premises comprised in the said term of 1,000 years as shall be equivalent to the interest of such portion or portions, at the rate of 2*l.* for every 100*l.* by the year, towards the maintenance and education of such child or children (not being an eldest or only child entitled as aforesaid.) AND when such portion shall become payable, and until the same shall be paid, do and shall pay such yearly sum as will be equivalent to the interest of such portion or portions, at the rate of 4*l.* for every 100*l.* by the year. AND ALSO do and shall at their or his discretion apply such sums for the maintenance and education of such child or children accordingly, or pay the said several sums of money to the guardian or guardians for the time of such child or children, to be applied for such maintenance and education; such respective sums for maintenance and education to be paid by equal quarterly payments, on the several days for payment hereinbefore mentioned

the first payment to be made on such of the said days as shall first happen after the decease of the said (*intended husband*.)

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*Marriage
Settlement, by
which Freehold
Estates are
settled, &c.*

*Provisions for
survivorship
and accruer.*

35. PROVIDED ALWAYS, that if there shall be more than one such child for whom portions are hereby provided as aforesaid, and any one of them shall become an eldest or only son, or shall die before his or her portion shall become payable THEN, and in such case, and in default of and subject to any such appointment as aforesaid, the portion hereby intended for such child so becoming an eldest child, or dying before his or her portion shall become payable, or such part thereof as shall not have been advanced for his or her benefit under the powers hereinafter limited, shall accrue to the survivor or survivors of such children (not being an eldest or only child entitled as aforesaid), and shall vest or be paid to him, her or them, if more than one, in equal shares, at the same ages, days and times respectively, and in the same manner as is hereinbefore declared concerning his, her, or their original portion or portions; and such benefit of survivorship and accruer shall extend as well to the surviving, as to the original, portion or portions; but so nevertheless that no one child shall be entitled by survivorship to more than the sum of £ for his or her portion.

36. PROVIDED ALWAYS, AND IT IS HEREBY FURTHER DE-
CLARED, that it shall be lawful for the said (*trustees of 1,000 years' term*), and the survivor of them, his executors or administrators, at any time during the lifetime of the said (*intended husband*), with his consent in writing under his hand, and at any time after his decease, at the discretion of the said (*trustees of 1,000 years' term*), and the survivor of them, his executors or administrators, to levy and raise, by any of the ways and means aforesaid (but subject and without prejudice as aforesaid), any part not exceeding one-half of the portions hereby intended for such of the said children as shall be a younger son or sons, for the purpose of his or their placing out to any business, profession or employment, or being a daughter or daughters upon her or their marriage, or otherwise for his, her or their benefit or advancement in the world, notwithstanding his, her or their portion or portions shall not then have become payable; but so nevertheless that the sums so raised shall

*Power of
advancement.*

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be considered as part of the portion or portions hereby provided for such child or children for whose benefit such sum or sums shall be so raised as hereinbefore mentioned ; and subject and chargeable as last aforesaid,

Subject to
trusts of 1000
years' term,
persons entitled
in reversion to
receive the
surplus rents
and profits.

37. UPON TRUST, that the said (*trustees of 1,000 years' term*), and the survivor of them, his executors or administrators, do and shall permit and suffer the person or persons entitled to the immediate reversion or remainder expectant on the determination of the said term of 1,000 years in the said premises therein comprised, to receive the rents and profits which shall remain unapplied in the execution of the trusts hereby declared of the said term.

Proviso that
sums advanced
to children for
their placing
out in the
world shall be
deemed a
satisfaction of
their portions
pro tanto.

38. PROVIDED ALWAYS, that in case the said (*intended husband*) shall in his lifetime advance any sum or sums of money towards the placing out of any of the said children, being a younger son, in any profession, business, or employment, or being a daughter or daughters upon her or their marriage, THEN, if such sum or sums of money shall amount to or exceed the portions hereinbefore intended to be provided for such child or children, such sum or sums so advanced shall be deemed and be a satisfaction for such portion or portions respectively; but if such advanced sum or sums shall be less than the portion or portions hereinbefore intended to provide for such child or children respectively, THEN such advanced sum or sums shall be deemed to be part of the portion or portions intended for such child or children respectively, unless the said (*intended husband*) by writing under his hand shall declare to the contrary thereof. [INSERT proviso for cesser of term, *ut ante*, clause 29, p. 676.]

Intended
husband
empowered to
settle a jointure
on any
future wife.

39. PROVIDED ALSO, AND IT IS HEREBY FURTHER DECLARED, that if the said (*intended wife*) shall happen to die in the lifetime of the said (*intended husband*), THEN it shall be lawful for the said (*intended husband*), either before or after his marriage with any woman or women whom he shall hereafter marry, by any deed or instrument in writing, with or without power of revocation and new appointment, or by his last will, or any codicil or codicils annexed thereto (but subject nevertheless and without prejudice as aforesaid), to limit and appoint to the use of, or in trust for, any woman or women whom he shall after the decease of the said (*intended wife*)

happen to marry, for the life or lives of such woman or women, and for her or their jointure or jointures, and in bar of all dower and thirds, any yearly rent-charge or annual sum, not exceeding for any such woman the sum of £ sterling, to be issuing and payable out of, and charged and chargeable upon, the said manor, hereditaments and premises, free from all deductions (except on account of the tax on property or income) with the like powers and remedies for receiving and enforcing payment of the same, as are hereinbefore contained concerning the said yearly rent-charge or annual sum of 500*l.* so limited for the benefit of the said (*intended wife*) as aforesaid; and also to limit the said manor, hereditaments and premises (but subject and without prejudice as aforesaid), to any person or persons, his, her, or their executors, administrators and assigns, with or without impeachment of waste, for any term of number or years, for the purpose of securing the due payment of such yearly rent-charge or annual sum, but so nevertheless that such term shall be so limited as to cease up on the death of the woman for the benefit of whom such term shall have been created.

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Settlement, by
which Freehold
Estates are
settled, &c.

40. PROVIDED ALWAYS, AND IT IS HEREBY FURTHER DECLARED, that it shall be lawful for the said (*trustees of settlement*), or the survivor of them, his heirs or assigns, at any time during the joint lives of the said (*father*) and (*intended husband*) with their joint consent in writing, and after the decease of either of them, with the consent in writing of the survivor, and after the decease of such survivor, at the discretion of the said (*trustees of settlement*), or the survivor of them, his heirs or assigns, to make partition of any undivided portions of the said manor, (*c*) hereditaments and premises, to any other person or persons entitled to the other undivided portions thereof, or to dispose of the same manor, hereditaments and premises by way of absolute sale, or by way of exchange for other lands of freehold, copyhold, or customary estates of inheritance to

Power of
partition, sale
or exchange.

(*c*) The statute of Hen. 8 has expressly included "manors," and authorized their partition amongst tenants in common. The difficulty consists in doing it. In *Hanbury v. Hussey* (17 L. T. 335), one was entitled to two-thirds, and the other to one-third of a manor: on a bill filed for a partition, a decree was made accordingly, and it was referred to the Master to report upon the nature of the property, and the right of the plaintiffs, but the Master of the Rolls refused to say then how the partition should be effected: (and see 17 L. T. 177.)

Practical
remarks.

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Settlement, by
which Freehold
Estates are
settled, &c.*

any person or persons whomsoever, for such sum or sums of money, or other equivalent in lands, as may be deemed reasonable by the said (*trustees of settlement*), or the survivor of them, his heirs or assigns.

Power to revoke
old uses,
and to give
receipts.

41. AND IT IS HEREBY ALSO DECLARED, that it shall be lawful for the said (*trustees of settlement*), or the survivor of them, his heirs or assigns, by any deed or deeds to revoke all the uses, trusts, estates and powers hereinbefore limited and declared of and concerning the hereditaments and premises so to be conveyed by way of partition, or sold and given in exchange as aforesaid, and by the same or by any other deed or deeds to declare or appoint any uses or estates of the same hereditaments and premises, the uses of which shall have been so revoked as aforesaid, for the purpose of effecting such partition, sale or exchange as hereinbefore mentioned. AND ALSO to give receipts for the purchase moneys, and any moneys received for equality of exchange or partition; which receipts shall be an effectual discharge for all such moneys as therein shall be expressed to have been received, and exonerate the parties paying the same from all responsibility with respect to the application thereof.

Trustees to
invest moneys
arising from
sale, or given
for equality of
partition in the
purchase of
other lands, to
be settled to the
same uses
as before
limited.

42. AND IT IS HEREBY MOREOVER DECLARED, that the said (*trustees of settlement*), and the survivor of them, his heirs or assigns, do and shall during the joint lives of the said (*father*) and (*intended husband*), with their joint consent in writing, and after the decease of either of them with the consent of the survivor, and after the decease of such survivor, at the discretion of the said (*trustees of settlement*), or the survivor of them, his heirs or assigns, invest the moneys arising from such sale or sales, or so received for equality of exchange or partition as aforesaid, in the purchase of freehold or copyhold or customary estates of inheritance, to be situate in England or Wales, but not in Ireland, and do and shall stand seised or possessed of the said freehold, or copyhold or customary estates so to be purchased, taken in exchange, or allotted by way of partition as aforesaid, to such and the same uses, upon such and the same trusts, and for such and the same ends, intents and purposes, and with, under and subject to the same powers, provisoes and declarations, as are hereinbefore ex-

pressed, declared and contained, of and concerning the said manor, hereditaments and premises hereby granted and released, or as near thereto as the death of parties, and other intervening circumstances will then permit.

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Settlement, by
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Estates are
settled, &c.

43. AND IT IS HEREBY MOREOVER DECLARED, that until an eligible purchase shall be found, the said (*trustees of settlement*), and the survivor of them, his heirs or assigns, shall invest the said purchase moneys, or moneys received for equality of exchange or partition, in the Bank of England, or upon Government securities, or in some of the public stocks or funds, or by way of mortgage upon sufficient freehold, copyhold, or customary or leasehold estates, to be situate in England or Wales, but not in Ireland, in the names of the said (*trustees of settlement*), or the survivor of them, his heirs or assigns, with full power to alter, vary and transpose the same as occasion shall require; and do and shall pay the interest, dividends, and annual proceeds arising therefrom, to the person or persons who for the time being would be entitled to the rents and profits of the hereditaments and premises so to be purchased, or taken by way of exchange, or allotted by way of partition as aforesaid, as if the same had been actually purchased and settled accordingly. PROVIDED ALWAYS, that no such investment, or variation of securities as aforesaid, shall be made during the lifetime of the said (*father*) and (*intended husband*), or either of them, without their consent, or the consent of the survivor of them, testified by writing under their or his hands or hand.

Until an eligible
purchase can be
found, purchase
moneys to be
invested at
interest.

44. PROVIDED ALWAYS, AND IT IS HEREBY FURTHER DECLARED, that it shall be lawful for the said (*father*) and (*intended husband*), during their joint lives, and after the decease of either of them for the survivor, and after the decease of such survivor, for every person or persons being tenant or tenants in tail of the said manor, hereditaments and premises hereby granted and released under or by virtue of the limitations hereinbefore contained, by any deed or deeds, either referring or not referring to this present power, to appoint, by way of demise or lease, all or any part of the said manor, hereditaments and premises, as also all or any part of the hereditaments and premises which may be

Power to grant
leases.

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Settlement, by
which Freehold
Estates are
settled, &c.*

purchased, taken in exchange, or allotted by way of partition as aforesaid, to any person or persons for any term of years not exceeding twenty-one years in possession and not in reversion, at the best yearly rent that can reasonably be obtained for the same, and without taking any fine, premium, or foregift for the making thereof; and so that there be contained therein a clause or proviso for re-entry for nonpayment of the rent thereby to be reserved for the space of twenty-one days next after the same shall become due, and so that the said lessee or lessees shall execute the said lease, or a counterpart thereof, and therein covenant for the payment of the rent thereby to be reserved, and so that such lessee or lessees be not made punishable for waste.

Power to
change trustees,
with usual
indemnity.

45. PROVIDED ALWAYS, AND IT IS HEREBY LASTLY DECLARED, that if the said trustees hereby appointed, or to be appointed as hereinafter mentioned, or any of them, shall happen to die, continue to reside abroad for the space of more than twelve calendar months, or shall become a bankrupt, or take the benefit of any act for the relief of insolvent debtors, or be desirous of being discharged from, disclaim, neglect, refuse to act, or become incapable of acting in the trusts hereinbefore declared before the same trusts shall be fully performed, THEN and in such case, and so often as the same shall happen, it shall be lawful for the said (*father*), and (*intended husband*), and during their joint lives, and after the decease of either of them for the survivor, and after the decease of such survivor, for the surviving or continuing trustees or trustee of these presents for the time being, or the executors or administrators of the last surviving or continuing trustee, by any deed or instrument in writing, from time to time to substitute or appoint any other persons or person in the stead or place of such trustees or trustee so dying, continuing to reside abroad, becoming bankrupt or insolvent, desirous to be discharged, disclaiming, neglecting, or refusing to act, or becoming incapable of acting as aforesaid; and immediately thereupon all the aforesaid trust estate and premises shall be forthwith conveyed, assigned and assured, so and in such manner as that the same may become legally and effectually vested in such new trustee or trustees, either jointly with the surviving or continuing trustee or trustees, or solely, as the case may be, TO THE USES, upon the trusts, and for

the ends, intents and purposes hereinbefore limited and declared, or such of them as shall be then subsisting undetermined and capable of taking effect. AND every instrument expressed to be made in pursuance of the aforesaid power, and not appearing on the face of it to be invalid, shall, although not so made, be valid and effectual for all purposes other than the exoneration of the parties to the making thereof from responsibility. AND that every such new trustee or trustees, either before or after such conveyance, assignment or assurance as aforesaid, shall have the same power and authority in all respects as if he or they had been originally appointed a trustee or trustees by these presents; (d) and that no trustee or trustees hereby appointed, or to be appointed as aforesaid, shall be responsible for the acts, deeds or defaults of any co-trustee or co-trustees, nor for involuntary losses, nor for moneys expressed to have been received in any receipt or receipts in which they shall join for conformity only, (e) nor be accountable for the sufficiency of any banker, broker, attorney, solicitor, agent, auctioneer, or any other person or persons whomsoever with whom any of the trust moneys may be deposited for safe custody or otherwise, or who may receive the same in the execution of the aforesaid trusts; nor for the insufficiency of any stocks, funds, or securities, or of the title of any estates to be taken by way of exchange or purchased as aforesaid, or upon which any of the said trust moneys may be invested; nor for any other loss or damage that may happen to arise of or to all or any part of the said trust estate, trust moneys and premises, unless through the wilful default of such trustees respectively; and that the present or any future trustees or trustee shall and may reimburse themselves and each other out of the moneys which shall come to their re-

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Settlements, by
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settled, &c.

(d) This provision is rather an important one, as it has been held that a mere appointment does not constitute the appointee complete trustee, and that he cannot act as such, until the trust estate has become legally vested in him by an actual conveyance or assignment of the property: (*Warburton v. Landys*, 14 Sim. 622; and see *Bennett v. Burgis*, 5 Hare, 295.)

(e) This provision, although in express terms it purports to be an indemnity to trustees is in reality a mere formal clause to which a court of equity pays no attention, and does not relieve them from their equitable responsibilities, nor afford any further protection than they would be entitled to, if it had been left out of the deed altogether. In fact, the responsibilities of trustees are so great, that it seems surprising any persons cognizant of them should be found to

Practical
observations.

As to the
liability of
trustees.

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Settlement, by
which Freehold
Estates are
settled, &c.*

spective hands by virtue of these presents, all such costs, damages, and expenses as they, or any of them shall or may suffer, sustain, expend, disburse or be put unto in or about the execution of the aforesaid trusts, or in relation thereto.

IN WITNESS, &c.

accept so thankless, troublesome, unprofitable, and dangerous a duty; there being so many ways in which a trustee, without any default whatever on his part, may, by the misconduct of his co-trustee, incur liabilities which may involve him in heavy expenses, if not in utter ruin. Thus, if a trustee, on a representation by his co-trustee that money is wanted to carry on the affairs of the trust, joins in a power of attorney for the sale of stock, or in the re-conveyance of a mortgage, and permits the proceeds to go into the hands of the latter, a clause of indemnity as in the above precedent, would not exonerate the concurring trustee from seeing to the application of the trust moneys: (*Brice v. Stokes*, 11 Ves. 510; *Bone v. Cook*, 3 Sim. 271; and see *Bartlett v. Hodson*, T. R. 42.) Nor is there any instance in which a clause of indemnity can be safely relied upon to exonerate a trustee who joins in a receipt, from the responsibility he thereby incurs, although not one farthing of money actually passes through his hands; nor in any case in which he would otherwise be accountable, will a clause of this kind relieve him from responsibility. It seems, however, that if a trustee, by the direction, or with the consent of the *cestuis que trust*, permits his co-trustee to get the trust moneys into his hands, and the latter afterwards misapplies the same, the concurring trustee would not be accountable for these moneys, so far at any rate as the *cestuis que trust*, who directed or consented to the receipt of such moneys by the co-trustee, are concerned. Neither is a trustee liable who, with the consent of all the parties interested, lets the money remain in the hands of a person who becomes insolvent: (*Rees v. Williams*, De Gex & S. 314.) So in the case of an attorney, who had part of the trust funds in his hands, becoming insolvent, a trustee will not be chargeable, if the business was transacted in the ordinary manner, without any circumstance to show suspicion. And in certain cases also, where a loss is occasioned by the failure of bankers with whom the money is deposited, the rule of equity is that where the deposit was made from necessity, or conformably to the common usage of mankind, a trustee or executor making such deposit will not be responsible for the loss: (See 15 L. T. Rep. 530.)

No. II.

MARRIAGE SETTLEMENT, BY WHICH REAL ESTATES, THE PROPERTY OF THE INTENDED HUSBAND, ARE CONVEYED TO TRUSTEES UPON TRUST TO SELL, AND TO INVEST THE PROCEEDS, AND TO PAY THE INCOME TO THE INTENDED HUSBAND FOR LIFE, WITH REMAINDER TO THE INTENDED WIFE, IN CASE OF HER SURVIVING HIM, WITH POWER OF APPOINTMENT IN FAVOUR OF THE CHILDREN OF THE MARRIAGE, AND IN DEFAULT THEREOF, TO BE DIVIDED AMONGST THE CHILDREN EQUALLY, WITH PROVISIONS FOR MAINTENANCE, POWER OF ADVANCEMENT, AND ALSO WITH POWER OF APPOINTMENT BY THE INTENDED HUSBAND IN CASE NO CHILDREN OF THE MARRIAGE SHALL LIVE TO ACQUIRE A VESTED INTEREST IN THE TRUST MONEYS.

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| 1. Parties. | 11. In default of appointment amongst children equally. |
| 2. Recital of intended marriage. | 12. Hotchpot clause. |
| 3. Testatum. | 13. Provisions for maintenance. |
| 4. Habendum. | 14. Power of advancement. |
| 5. Trusts for sale. | 15. In case no children shall acquire a vested interest under the settlement, trustees shall stand possessed of trust moneys. |
| 6. Declaration that trustees shall stand possessed of purchase-moneys. | 16. Upon trust for such persons as intended husband shall by deed or will appoint. |
| 7. Upon trust to invest, with power to vary securities. | 17. Ultimate trust for intended husband. |
| 8. To pay the income to intended husband for life. | 18. Trust of income of real estate until sold. |
| 9. Trust to pay income to intended wife for life. | |
| 10. For children of intended marriage as husband and wife or survivor shall appoint. | |

1. THIS INDENTURE, made the day of A.D. 18 , Parties.

No. II.
 Marriage
 Settlement, by
 which Real
 Estates are
 conveyed to
 Trustees, &c.

Recital of
 intended
 marriage.

BETWEEN (*intended husband*), of &c., of the first part, (*intended wife*), of, &c., of the second part, and (*trustees*), of, &c., of the third part.

2. WHEREAS a marriage is intended to be shortly solemnized between the said (*intended husband*) and (*intended wife*), and upon the treaty for the said marriage it was agreed that the hereditaments and premises hereinafter described, the property of the said (*intended husband*), should be settled and assured to the uses, upon the trusts, and for the ends, intents and purposes hereinafter limited and declared.

Testatum.

3. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, and also in consideration of the sum of 5s., paid by the said (*trustees*) to the said (*intended husband*) on the execution hereof, the receipt of which is hereby acknowledged, HE, the said (*intended husband*), DOTH by these presents grant, release and confirm unto the said (*trustees*) and their heirs, &c. ALL, &c. [DESCRIBE *parcels*.] AND all rights, members and appurtenances to the said hereditaments and premises belonging or appertaining. AND all the estate, right, title and interest, both legal and equitable, of him the said (*intended husband*) therein.

Habendum.

4. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*trustees*) and their heirs, to the use of the said (*intended husband*) and his heirs until the solemnization of the said intended marriage; and after the solemnization thereof,

Trusts for sale.

5. UPON TRUST that the said (*trustees*), or the survivor of them, his executors or administrators, do and shall, with the consent of the said (*intended husband*) and (*intended wife*) during their joint lives, and after the decease of either of them, with the consent of the survivor during his or her life, and after the decease of such survivor, at the discretion of the trustees or trustee for the time being of these presents, make sale, and absolutely dispose of the said hereditaments and premises hereby granted and released, by public auction or private contract, either together or in parcels,

with full power to buy in and re-sell the same without being responsible for any loss that may be thereby incurred, and also to enter into all such contracts, stipulations, acts, deeds, conveyances and assurances as may be deemed necessary or expedient for the purpose of completing such sale or sales. AND IT IS HEREBY DECLARED, that all receipts of the trustees or trustee for the time being of these presents shall be an effectual discharge to any purchaser or purchasers of the said hereditaments and premises for so much money as in such receipt or receipts shall be expressed to have been received, and exonerate such purchaser or purchasers from seeing to the application thereof, or from being accountable for the misapplication or nonapplication of the same or any part thereof.

No. II.
*Marriage
 Settlement, by
 which Real
 Estates are
 conveyed to
 Trustees, &c.*

6. AND IT IS HEREBY DECLARED AND AGREED, that the said *(trustees)*, or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, do and shall stand possessed of the moneys to arise from such sale or sales, upon the trusts, and subject to the powers and provisoes, hereinafter limited and declared :

Declaration that
 trustees shall
 stand possessed
 of purchase-
 moneys.

7. UPON TRUST that they the said *(trustees)*, or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, do and shall lay out and invest the said purchase moneys in some of the public stocks or funds of Great Britain, or upon government or real securities in England or Wales, but not in Ireland, or in or upon the shares, stock or securities of any company in England or Wales, incorporated by act of Parliament, and paying a dividend, with power from time to time for the said trustees or trustee of these presents, with such consent or at such discretion as aforesaid, to alter, vary and transpose the same as they or he may think fit ; and do and shall stand possessed of the said trust moneys, stocks, funds and securities,

Upon trust to
 invest, with
 power to vary
 securities.

8. UPON TRUST to pay the interest, dividends and annual proceeds thereof, or permit the same to be received by the said *(intended husband)* or his assigns for the term of his life ; and after his decease,

To pay the
 income to
 intended
 husband for
 life.

No. II.

*Marriage
Settlement, by
which Real
Estates are
conveyed to
Trustees, &c.*

9. UPON TRUST to pay the said interest, dividends and annual proceeds, or permit the same to be received by the said (*intended wife*) and her assigns, for the term of her life, in case she shall survive the said (*intended husband*); and after her decease,

Trust to pay
income to
intended wife
for life, in case
she shall
survive intended
husband.

For children of
intended
marriage, as
husband and
wife, or
survivor, shall
appoint.

10. UPON TRUST for the child, or for all or any such one or more of the children, of the said intended marriage, in such parts, shares and proportions as the said (*intended husband*) and (*intended wife*) shall by any deed or deeds, with or without power of revocation and new appointment, jointly appoint; and in default of such appointment, then as the survivor of them, the said (*intended husband*) and (*intended wife*) shall, by any deed or writing, with or without power of revocation and new appointment, or by his or her last will, or any codicil or codicils annexed thereto, appoint; and in default of such last-mentioned appointment,

In default of
appointment
amongst
children
equally.

11. UPON TRUST for all the children or any the child of the said intended marriage, who, being a son or sons, shall attain the age of twenty-one years, or who, being a daughter or daughters, shall attain that age or marry, and if more than one, in equal shares as tenants in common.

Hotchpot
clause.

12. PROVIDED ALWAYS, that no child taking any portion of the said trust moneys and premises under the power of appointment hereinbefore limited, shall be entitled to share in the unappointed part of the said trust moneys and premises without bringing his or her appointed share into hotchpot, and accounting for the same accordingly.

Provisoos for
maintenance.

13. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that it shall be lawful for the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, at any time after the decease of the survivor of them the said (*intended husband*) and (*intended wife*); at their or his discretion, to apply the whole or any part of the income of the presumptive share or shares to which any child or children of the said intended marriage shall be entitled under the trusts herein declared, towards the maintenance or education of such child or children, either directly, or to his, her or their

guardian or guardians, without being required to see to the application thereof, or requiring any account of the same; and to apply the residue of such income, if any, in augmentation of the share or respective shares from which the same shall or may have arisen.

No. II.

Marriage
Settlement, by
which Real
Estates are
conveyed to
Trustees, &c.

14. PROVIDED ALSO, AND IT IS HEREBY FURTHER DECLARED, that it shall be lawful for the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, by and with the consent in writing of the said (*intended husband*) and (*intended wife*), during their joint lives, and after the decease of either of them, then with the consent of the survivor, and after the decease of such survivor, then at the discretion of the trustees or trustee for the time being of these presents, to advance any part not exceeding one-half of the presumptive share or shares of such child or children, in or towards his or her placing out in some profession, business, trade or employment, or other advancement in the world. Power of advancement.

15. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that if there shall be no child of the said intended marriage, who, being a son or sons, shall attain the age of twenty-one years, or who, being a daughter or daughters, shall attain that age or marry, then the said (*trustees*), and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, do and shall stand possessed of the said trust moneys, stocks, funds and securities, In case no children shall acquire a vested interest under the settlement, trustees shall stand possessed of trust moneys

16. UPON TRUST for such person or persons, and for such ends, intents and purposes, and in such manner or form (but without prejudice to the trusts hereinbefore declared in favour of the said (*intended wife*)), as the said (*intended husband*) shall from time to time or at any time, by any deed or instrument in writing, with or without power of revocation and new appointment, or by his last will or any codicil or codicils annexed thereto, appoint; and in default of such appointment, Upon trust for such persons as intended husband shall by deed or will appoint.

17. UPON TRUST for the said (*intended husband*), his executors, Ultimate trust for intended husband.

No. II.

*Marriage
Settlement, by
which Real
Estates are
conveyed to
Trustees, &c.*

Trusts of
income of real
estate until
sold.

administrators and assigns, and to pay and assign over the same to him or them accordingly.

18. PROVIDED ALWAYS, AND IT IS HEREBY MOREOVER DECLARED, that until all the said hereditaments and premises shall be sold, the said (*trustees*), and the survivor of them, his heirs, executors and administrators, or other the trustees or trustee for the time being of these presents, do and shall pay and apply the net rents and profits of the same hereditaments and premises, or o such part or parts thereof as shall not be sold, to the person or persons to whom the interest, dividends and annual proceeds of the said trust moneys, stocks, funds and securities would be payable if such hereditaments and premises had been then sold, and the purchase-moneys arising from such sale or sales had been so invested as aforesaid. [*ADD power to change trustees, with usual indemnity, as in last precedent, clause 45, p. 684.*]

IN WITNESS, &c.

No. III.

SETTLEMENT, BY WHICH COPYHOLD PREMISES, OF WHICH THE INTENDED HUSBAND IS SEISED IN FEE, ARE COVENANTED TO BE SURRENDERED TO TRUSTEES, UPON TRUST FOR THE INTENDED HUSBAND FOR LIFE, WITH REMAINDER TO THE INTENDED WIFE FOR LIFE, IN CASE OF HER SURVIVING HIM; WITH REMAINDER TO THE FIRST AND OTHER SONS OF THE INTENDED MARRIAGE SUCCESSIVELY IN TAIL, WITH REMAINDER TO DAUGHTERS AS TENANTS IN COMMON IN TAIL, WITH CROSS-REMAINDERS BETWEEN THEM; WITH POWER TO RAISE PORTIONS FOR YOUNGER CHILDREN. PROVISIONS FOR MAINTENANCE, AND POWER FOR TRUSTEES TO GRANT LEASES WITH THE LICENCE OF THE LORD; TO GIVE RECEIPTS; AND TO CHANGE TRUSTEES.

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| <ol style="list-style-type: none"> 1. Parties. 2. Recital of intended marriage, and of agreement to settle copyhold premises. 3. Testatum, by which intended husband covenants to surrender copyholds. 4. Trustees out of rents and profits to defray expenses, &c., payable in respect of copyhold premises. 5. Trust for intended husband for life. 6. Trust for intended wife for life. 7. For first son of the marriage in tail. 8. For second and other sons in tail. 9. Trusts for daughters as tenants in common in tail with cross remainders between them. 10. Ultimate trust for intended husband in fee. | <ol style="list-style-type: none"> 11. Covenant from intended husband, that until surrender he will stand possessed of copyholds upon the trusts of settlement. 12. Power to raise portions for younger children. 13. Hotch-pot clause. 14. Provisions for maintenance. 15. Provisions for accruer in case any child shall become an eldest son. 16. Power of advancement. 17. No sale or mortgage to be made for the purpose of raising portions until such portions shall become payable. 18. Power for trustees to grant leases. 19. Power for trustees to give receipts. |
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1. THIS INDENTURE, made the day of A.D. 185 , Parties.

No. III. BETWEEN (*intended husband*), of the first part, (*intended wife*) of the second part, and (*trustees*) of the third part.

Settlement, by
which Copyhold
Premises are
covenanted to be
surrendered to
Trustees, &c.

Recital of
intended
marriage, and
of agreement to
settle copyhold
premises.

2. WHEREAS a marriage is intended to be shortly solemnized between the said (*intended husband*) and (*intended wife*), and upon the treaty for the said marriage, it was agreed that the copyhold hereditaments and premises hereinafter described and covenanted to be surrendered with the appurtenances, and to which the said (*intended husband*) is entitled for an estate of inheritance to him and his heirs, according to the custom of the manor of , should be settled and assured to the uses, upon the trusts, and for the ends, intents and purposes hereinafter limited and declared.

Testatum, by
which intended
husband
covenants to
surrender
copyholds.

3. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said intended marriage, and also in consideration of the sum of five shillings sterling paid by the said (*trustees*) to the said (*intended husband*) (the receipt of which is hereby acknowledged), HE, the said (*intended husband*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*trustees*), their heirs and assigns, that he the said (*intended husband*), his heirs or assigns, shall and will, after the solemnization of the said intended marriage, at his and their own proper costs, when thereunto requested by the said (*trustees*), their heirs or assigns, well and effectually surrender into the hand of the lord or lady for the time being of the manor of , or other the manor or manors whereof the said copyhold hereditaments and premises hereinafter described are holden, according to the custom of the said manor or manors, ALL, &c. (DESCRIBE *parcels*), AND all rights, privileges and appurtenances to the said copyhold hereditaments and premises belonging or appertaining: TO THE INTENT that the said (*trustees*), their heirs and assigns, may be admitted tenants of the said copyhold hereditaments and premises on the court rolls of the said manor: TO HOLD to them, their heirs and assigns for ever at the will of the lord, according to the custom of the said manor, subject to the rents, duties, suits, and services therefore due and of right accustomed, UPON THE TRUSTS, and for the ends, intents and purposes hereinafter declared (that is to say):

4. UPON TRUST, in the first place, out of the rents and profits of the said copyhold hereditaments and premises, or by such other ways or means as the said (*trustees*), or the survivor of them, his heirs or assigns shall deem expedient, levy and raise such sum and sums of money, as shall be necessary for the payment of any fines, fees, or other customary expenses and outgoings, which they or he shall pay, discharge, or be liable to, by reason of their surrender, admission, or otherwise in respect of the said copyhold hereditaments and premises, or in the execution of the trusts hereby in him and them reposed; and subject thereto,

No. III.

Settlement, by which Copyhold Premises are covenanted to be surrendered to Trustees, &c.

Trustees out of rents and profits to defray expenses, &c., payable in respect of copyhold premises.

5. UPON TRUST, that the said (*trustees*), and the survivor of them, his heirs and assigns, do and shall pay, or otherwise permit and suffer the said (*intended husband*) and his assigns to receive the rents and profits of the said copyhold hereditaments and premises during the term of his natural life; and immediately after his decease,

Trust for intended husband for life.

6. UPON TRUST to pay, or otherwise permit and suffer the said (*intended wife*) and her assigns, in case she shall survive the said (*intended husband*), to receive, the rents and profits of the said copyhold hereditaments and premises during the term of her natural life; and immediately after the decease of the survivor of them the said (*intended husband*) and (*intended wife*),

Trust for intended wife for life.

7. UPON TRUST, for the first son of the said (*intended husband*), on the body of the said (*intended wife*), and the heirs of the body of such first son; and in default of such issue,

For first son of the marriage in tail.

8. UPON TRUST, for the second, third, fourth, fifth, sixth, and every son and sons of the said (*intended husband*) on the body of the said (*intended wife*) successively, and in remainder one after another as they shall be in priority of birth, and of the several and respective heirs of the body of all and every such son and sons; the elder of such sons and the heirs of his body being always to take before the younger of such sons and the heirs of his body; and for default of such issue,

For second and other sons in tail.

9. IN TRUST, for all and every the daughter and daughters of the

Trusts for daughters as

No. III.

Settlement, by which Copyhold Premises are covenanted to be surrendered to Trustees, &c.

tenants in common in tail, with cross remainders between them.

said (*intended husband*) on the body of the said (*intended wife*), in equal shares, as tenants in common, and of the several and respective heirs of the body and bodies of all and every such daughter and daughters; and in case there shall be a failure of issue of any one or more of such daughter or daughters (in case there shall be more than one such daughter), then as well the original share or shares, as the share or shares surviving or accruing to such last-mentioned daughter or daughters, or her or their issue, by virtue of these present cross executory limitations, shall be IN TRUST for the other or others the said daughter and daughters of the said (*intended husband*), on the body of the said (*intended wife*), if more than one, in equal shares as tenants in common; AND if all such daughters but one shall happen to die without issue; or if there shall be originally but one such daughter, *then*, IN TRUST for such surviving or only daughter, and the heirs of her body; and for default of such issue,

Ultimate trust for intended husband in fee.

10. IN TRUST for the said (*intended husband*), his heirs and assigns for ever.

Covenant from intended husband, that until surrender he will stand possessed of copyholds upon the trusts of settlement.

11. AND the said (*intended husband*), doth hereby for himself, his heirs, executors and administrators, further covenant with the said (*trustees*), their heirs and assigns, that immediately after the solemnization of the said intended marriage, until the said surrender so covenanted to be made as aforesaid shall be perfected, HE the said (*intended husband*) and his heirs shall stand possessed of the said copyhold hereditaments and premises with their appurtenances, upon the trusts, and for the ends, intents and purposes hereinbefore, and also hereinafter, limited and declared of and concerning the same.

Power to raise portions for younger children.

12. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that in case there shall be any child or children of the said intended marriage (not being an eldest son as aforesaid), it shall be lawful for the said (*trustees*), and the survivor of them, his heirs and assigns, either in the lifetime of the said (*intended husband*) and (*intended wife*), or the survivor of them, with their, his or her consent in writing, and after the decease of such survivor, then at the discretion of the trustees or trustee for the time being of these presents, by sale or mortgage

of the said copyhold hereditaments and premises, or a sufficient part thereof, by such other ways and means as the custom of the said manor will allow, or out of the rents and profits of the said premises, to raise and levy for the portion of such child or children, not being an eldest son as aforesaid, the sum or sums of money hereinafter mentioned (that is to say): if there shall be only one younger child (not being an eldest son as aforesaid), the sum of £ , and if two or more children, the sum of £ , equally to be divided between such children, if more than one, and payable to him, and to become vested in such child or children, at such ages, days, or times, and in such parts, shares and proportions as the said (*intended husband*) and (*intended wife*), or the survivor of them, by any deed or instrument in writing, with or without power of revocation, or as the survivor of them by his or her last will, shall appoint; and in default of such appointment, to become a vested interest in such child or children, being a younger son or sons, on his or their attaining the age of twenty-one years, or being a daughter or daughters, on attaining that age or marriage, to be paid to him, her or them as soon after such age or time as conveniently may be, if the same shall happen after the decease of the survivor of them the said (*intended husband*) and (*intended wife*); but if the same shall happen in the lifetime of the said (*intended husband*) and (*intended wife*), then such portion or portions shall be paid immediately after the decease of the survivor of them the said (*intended husband*) and (*intended wife*), unless they, or the survivor of them, shall by writing under their, his or her hands or hand, direct that the same shall be raised and paid in the lifetime of the said (*intended husband*) and (*intended wife*), or the survivor of them.

No. III.

Settlement, by
which Copyhold
Premises are
covenanted to be
surrendered to
Trustees, &c.

13. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that no child taking any part of his or her portion, under the aforesaid power of appointment to be made by the said (*intended husband*) and (*intended wife*), or the survivor of them, in pursuance of the powers for that purpose hereinbefore contained, shall be entitled to any share in the unappointed part of such portion, without bringing his or her appointed share into hotchpot, and accounting for the same accordingly.

Hotchpot
clause.

14: PROVIDED ALSO, AND IT IS HEREBY DECLARED, that it

Provisions for
maintenance.

No. III.

Settlement, by
which Copyhold
Premises are
covenanted to be
surrendered to
Trustees, &c.

shall be lawful for the said (*trustees*), or the survivor of them, his heirs or assigns, at any time after the decease of the survivor of them the said (*intended husband*) and (*intended wife*), in the meantime, until such portion or portions shall respectively become payable, to apply so much of the rents and profits of the said copyhold hereditaments and premises as shall be equivalent to the interest of such portion or portions respectively, at the rate of 2*l.* 10*s.* for every 100*l.* by the year, towards the maintenance and education of such child or children (not being an eldest child as aforesaid.) AND when such portion or portions shall become payable, until the same shall be paid, such yearly sum as will be equivalent to the interest on such portions at the rate of 5*l.* for every 100*l.* by the year.

Provisions for
accruer in case
any child shall
become an
eldest son.

15. PROVIDED ALSO, AND IT IS HEREBY MOREOVER DECLARED, that in case any child entitled to such portion as aforesaid shall become an eldest or only son, or shall die before his or her portion shall become payable, THEN and in default of and subject to any such appointment as aforesaid, the portion hereby intended for such child so becoming an eldest child, or dying before his or her portion shall become payable, or such part thereof as shall not have been advanced for his or her benefit, under the powers hereinafter limited, shall accrue to the survivor or survivors of such children (not being an eldest child as aforesaid), and be payable to him, her and them at the same ages, days and times as are hereinbefore declared concerning his, her or their original portion or portions. AND such benefit of survivorship and accruer shall extend as well to the surviving, as to the original, portion or portions; but so nevertheless that no one child shall be entitled by survivorship or otherwise to more than the sum of £ .

Power of
advancement.

16. PROVIDED ALWAYS, AND IT IS HEREBY FURTHER DECLARED, that it shall be lawful for the said (*trustees*), and the survivor of them, his heirs or assigns, by any of the ways and means aforesaid, and either in the lifetime of the said (*intended husband*) and (*intended wife*), or the survivor of them, with the consent in writing of the said (*intended husband*) and (*intended wife*), or the survivor of them, and after the decease of such survivor, at the discretion of the trustees or trustee for the time being

of these presents, to levy and raise any part not exceeding one-half of the portion or portions of such younger child or children respectively, in or towards their placing out or advancement in the world, but so nevertheless that the sums so raised shall be considered as part of the portion or portions provided for such child or children for whose benefit such sum or sums of money shall be so raised as aforesaid.

No. III.

Settlement, by which Copyhold Premises are covenanted to be surrendered to Trustees, &c.

17. PROVIDED ALWAYS, that no sale or mortgage of the said copyhold hereditaments and premises shall be made for the purpose of raising such portion or portions as shall become payable under and by virtue of the trusts and powers hereinbefore contained, until some one or more of such portion or portions shall become payable, unless with the consent in writing of the said (*intended husband*) and (*intended wife*), or the survivor of them, or unless the same shall be made for the purpose of raising any sum or sums of money for the advancement of any of such younger children pursuant to the powers for that purpose hereinbefore contained.

No sale or mortgage to be made for the purpose of raising portions until such portions shall become payable.

18. PROVIDED ALWAYS, AND IT IS HEREBY MOREOVER DECLARED, that it shall be lawful for the said (*trustees*), and the survivor of them, his heirs or assigns, during the lifetime of the said (*intended husband*), with his consent in writing, and after his decease with the consent in writing of the said (*intended wife*), and after the decease of the survivor of them, then in his and their own discretion, during the minority of any child or children of the said intended marriage who shall be entitled to an estate tail in the said copyhold hereditaments and premises, by and with the licence of the lord or lady of the manor of whom the same copyhold premises are holden, or otherwise, as the custom of the said manor shall require, to demise or lease at rack rent, and without taking any fine, premium or foregift for the granting thereof, all or any part of the same hereditaments and premises to any person or persons, for any term not exceeding fourteen years in possession, and not in reversion, and so as in every such lease there shall be contained a proviso for re-entry for nonpayment of the rent thereby to be reserved, and so that the lessee or lessees shall execute a counterpart or counterparts of such lease or leases, and shall not be made punishable for waste.

Power for trustees to grant leases.

No. III.

Settlement, by
which Copyhold
Premises are
covenanted to
Trustees, &c.

Power for
trustees to
give receipts.

19. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that the receipt or receipts in writing of the trustees or trustee for the time being acting in the execution of these presents shall be an effectual discharge for so much moneys as in such receipt or receipts shall be expressed to have been received, and shall effectually exonerate the person or persons paying the same from all responsibility with respect to the application thereof. [ADD *power to change trustees, ut ante*, No. I., clause 45, p. 684.]

IN WITNESS, &c.

No. IV.

MARRIAGE SETTLEMENT, BY WHICH £4,000, THREE PER CENT. CONSOLIDATED ANNUITIES ARE SETTLED, UPON TRUST FOR THE HUSBAND FOR LIFE, REMAINDER TO THE WIFE FOR LIFE, IN CASE SHE SHOULD SURVIVE HIM, WITH REMAINDER TO CHILDREN OF THE MARRIAGE, AS HUSBAND AND WIFE, OR THE SURVIVOR, SHALL APPOINT; AND IN DEFAULT THEREOF, UPON TRUST FOR SONS AT TWENTY-ONE, AND DAUGHTERS AT TWENTY-ONE OR MARRIAGE, WITH PROVISOS FOR MAINTENANCE AND ADVANCEMENT; ALSO WITH ABSOLUTE POWER OF APPOINTMENT TO HUSBAND IN CASE OF THERE BEING NO CHILDREN. VARIATION, WHERE MONEY SECURED UPON MORTGAGE FORMS PART OF THE SUBJECT MATTER OF THE SETTLEMENT.

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| <ol style="list-style-type: none"> 1. Parties. 2. Recital of intended marriage, and that intended husband has agreed to transfer 4,000<i>l</i>. Three per cent. Consols, into the names of trustees of settlement. 3. That transfer has been made accordingly. 4. Testatum, declaring that trustees are to stand possessed of 4,000<i>l</i>. Three per cent. Consols. 5. Upon trust for intended husband until marriage. 6. Upon trust to invest, with power of varying securities. 7. Upon trust to pay interest and dividends to husband for life. 8. Upon trust to pay the same to wife in case she should survive him. | <ol style="list-style-type: none"> 9. Upon trust for children as husband and wife, or the survivor, shall appoint, and in default thereof, 10. Upon trust for children who being sons shall attain twenty-one, or being daughters shall attain that age or marry. 11. Provisoes for maintenance. 12. Power of advancement. 13. In case of there being no children of the intended marriage who shall acquire a vested interest in trust moneys, 14. Upon trust for such persons as husband shall by deed or will appoint. 15. Ultimate trust for intended husband absolutely. |
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16. Power to change trustees.

B. Of transfer of mortgage by intended wife to trustees.

Additional Clauses.

A. Recital of mortgage to intended wife.

C. Declaration that trustees shall stand possessed of mortgage moneys.

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*intended husband*), of, &c., of the first part, (*intended wife*), of, &c., of the second part, and (*two trustees*), of, &c., of the third part.

Recital of intended marriage, and that intended husband has agreed to transfer 4000*l.* Three per cent. Consols into the names of trustees of settlement.

2. WHEREAS a marriage hath been agreed upon and is intended to be shortly solemnized between the said (*intended husband*) and (*intended wife*), and upon the treaty for the said intended marriage it was agreed that the capital sum of 4,000*l.* Three per cent. Consolidated Annuities, the property of the said (*intended husband*), should be transferred into the names of the said (*trustees*), upon the trusts hereinafter declared.

That transfer has been made accordingly.

3. AND WHEREAS the said capital sum of 4,000*l.* Three per cent. Consolidated Annuities hath been accordingly transferred by the said (*intended husband*) unto the said (*trustees*), and the same is now standing in their names in the books of the Governor and Company of the Bank of England.(a)

(a) If money secured upon mortgage is intended to be settled, the following clauses will be found adapted for that purpose:—

Recital of mortgage to intended wife.

A. "WHEREAS by indenture dated the day of , made between (*mortgagors*) of the one part, and the said (*intended wife*) of the other part, ALL (DESCRIBE *parcels*) were conveyed and assured unto and to the use of the said (*intended wife*), her heirs and assigns for ever, subject to a proviso for redemption and reconveyance on payment by the said (*mortgagor*) his heirs, executors, administrators, or assigns, unto the said (*intended wife*) her executors, administrators, or assigns, of the sum of 2,500*l.*, and interest at the rate of 4*l.* for every 100*l.* by the year, on a certain day therein mentioned and since past." *

Practical suggestions.

* As all deeds of transfer of mortgage form part of the mortgagor's title, and as

4. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, it is hereby declared by and between the said parties to these presents, that the said (*trustees*), and the survivor of them, his executors or administrators, shall stand possessed of the said sum of 4,000*l*. Three per cent. Consolidated Annuities, (*b*) UPON THE TRUSTS, and for the ends, intents and purposes, and with, under and subject to the powers, provisoes, charges, declarations and agreements hereinafter limited, expressed and declared of and concerning the same (that is to say),

No. IV.

Marriage Settlement upon Trust for Husband for Life, remainders to Wife and Children, &c.

Testatum, declaring that trustees are to stand possessed of 4,000*l*. Three per cent. Consols.

5. UPON TRUST for the said (*intended husband*), until the solemnization of the said intended marriage, and after the solemnization thereof,

Upon trust for intended husband until marriage.

6. UPON TRUST that the said (*trustees*), or the survivor of them, his executors or administrators, shall either continue the

Upon trust to invest, with power to vary securities.

he is entitled to have them delivered over to him on redeeming the mortgage, it is always advisable where money secured upon mortgage forms part of a marriage settlement, to transfer the mortgage and mortgage money to the trustees of the settlement by a distinct deed, such as that alluded to in the above recital, and the trusts declared as in the above precedent, and declare the trusts in the deed of settlement.

B. "AND WHEREAS by indenture bearing date the day next before the day of the date of these presents made between the said (*intended wife*) of the one part, and the said (*trustees*) of the other part, the said (*intended wife*) conveyed and assured the said mortgaged hereditaments and premises, unto and to the use of the said (*trustees*), their heirs and assigns for ever, subject to such equity of redemption as was then subsisting in the same premises; and by the same indenture, the said (*intended wife*) assigned unto the said (*trustees*), their executors, administrators and assigns, the said mortgage debt of 2,500*l*., and all interest then or thereafter to grow due in respect of the same."

Of transfer of mortgage by intended wife to trustees.

(*b*) If mortgage money is settled, add—

C. "AS ALSO of the said sum of 2,500*l*., so assigned to the said (*trustees*) by the said hereinbefore recited indenture, bearing date the day next before the day of the date hereof."

Declaration that trustees shall stand possessed of mortgage-money.

No. IV. *Marriage Settlement upon Trust for Husband for Life, remainders to Wife and Children, &c.* said sum of 4,000*l.* Three per cent. Consolidated Annuities in its present state of investment, or shall sell out and invest the same in some other stocks or funds, or upon government securities, or by way of mortgage upon freehold, leasehold, or copyhold premises, which said stocks, funds and securities it shall be lawful for the said (*trustees*), and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, with the consent of the said (*intended husband*), during his lifetime, and afterwards at the discretion of the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, to alter, vary and transpose, as shall be deemed necessary or expedient, and do and shall stand and be possessed of the said trust moneys, stocks, funds and securities,

Upon trust to pay interest and dividends to husband for life. 7. UPON TRUST to pay the interest, dividends and annual produce thereof, or permit the same to be received by the said (*intended husband*), and his assigns, for the term of his life, and after his decease,

Upon trust to pay the same to wife in case she should survive him. 8. UPON TRUST to pay the said interest, dividends and annual produce, or permit the same to be received by the said (*intended wife*), and her assigns, for the term of her life, in case she shall survive the said (*intended husband*), and after his decease,

Upon trust for children, as husband and wife, or the survivor, shall appoint, and in default thereof, 9. UPON TRUST for all and every the child and children of the said (*intended husband*), by the said (*intended wife*), born in his lifetime, or in due time afterwards, in such parts, shares and proportions, and in such manner as the said (*intended husband*), and the said (*intended wife*), notwithstanding her coverture, shall at any time during their joint lives, by any deed or writing, with or without power of revocation, appoint. AND in default of such appointment, then as the survivor of them the said (*intended husband*) and (*intended wife*), by any deed or writing, with or without power of revocation, or by his or her last will, or any codicil or writing in the nature of a will, shall appoint; and in default of such last-mentioned appointment,

Upon trust for children, who 10. UPON TRUST for all and every the child and children of the

said (*intended husband*), by the said (*intended wife*), who being a son or sons shall attain the age of twenty-one years, or who being a daughter or daughters shall attain that age or be married, equally to be divided amongst them, if more than one, share and share alike as tenants in common, and in case there shall be but one child, then UPON TRUST for such one child.

No. IV.

Marriage
Settlement upon
Trust for
Husband for
Life, remainders
to Wife and
Children, &c.

being sons shall
attain twenty-
one years, or
being daughters
shall attain that
age or marry.
Provisoes for
maintenance.

11. AND in case at the time of the decease of the survivor of them the said (*intended husband*) and (*intended wife*), any of their said children, being a son or sons shall be under the age of twenty-one years, or being a daughter or daughters shall be under that age and unmarried, then UPON THIS FURTHER TRUST, that the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, do and shall apply a competent portion of the said interest, dividends and annual produce of the presumptive shares or share of such children or child, in and towards their, his or her maintenance, education and support.

12. AND IT IS HEREBY ALSO FURTHER DECLARED, that it shall be lawful for the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, by and with the consent of the said (*intended husband*) and (*intended wife*), during their joint lives, and after the decease of either of them, then with the consent of the survivor, and after the decease of such survivor, then at the discretion of the trustees or trustee for the time being of these presents, to advance any sum or sums of money not exceeding one-half of the presumptive shares or share of such children or child, who being a son or sons shall not have attained the age of twenty-one years, or who being a daughter or daughters shall not have attained that age or been married, for the purpose of placing them, him or her in or to any profession, trade, business, employment or advancement in the world.

Power of
advancement.

13. PROVIDED ALSO, AND IT IS HEREBY FURTHER DECLARED, that in case there shall be no child or children of the said (*intended husband*), by the said (*intended wife*), or being such, every one of them who shall be a son or sons shall die under the age of twenty-one years,

In case of
there being no
children of the
intended mar-
riage who shall
acquire a vested
interest in trust
moneys,

No. IV.

Marriage
Settlement upon
Trust for
Husband for
Life, remainders
to Wife and
Children, &c.

or being a daughter or daughters shall die under that age and unmarried, *then* the said (*trustees*), and the survivor of them, his executors or administrators, shall stand possessed of and interested in the said capital sum of 4,000*l*. Three per cent. Consolidated Annuities, or of the stocks, funds and securities in or upon which the same shall be then invested,

Upon trust for
such persons as
husband shall
by deed or will
appoint.

14. UPON TRUST for such person or persons, and for such ends, intents and purposes, and in such manner and form (but without prejudice to the life interest of the said (*intended wife*), by virtue of these presents) as the said (*intended husband*) shall from time to time or at any time by deed or will appoint; and in default of such appointment, and subject thereto,

Ultimate trust
for intended
husband
absolutely.

15. UPON TRUST for the said (*intended husband*), his executors, administrators and assigns, and to pay and assign the same accordingly.

Power to change
trustees.

16. PROVIDED ALWAYS, AND IT IS HEREBY MOREOVER DECLARED, that in case of the death, continued residence abroad, neglect, refusal or incapacity of either of them the said (*trustees*), or of any trustees or trustee to be appointed in their or his stead, it shall be lawful for the acting trustees or trustee for the time being of these presents, or the executors or administrators of the last acting trustee, with the consent of the said (*intended husband*) and (*intended wife*), during their joint lives, and after the decease of either of them, then with the consent of the survivor, and after the decease of such survivor, of the proper authority of such acting trustees or trustee for the time being, or the executors or administrators of the last acting trustee, to appoint a new trustee or trustees in the place of such trustee or trustees so dying, continuing to reside abroad, neglecting, refusing or becoming incapable to act as aforesaid; and thereupon the said trust estate and premises shall be forthwith transferred and assigned in such manner as that the same may vest in such new trustee or trustees, either jointly with the surviving or continuing trustee or trustees, or solely, as the case may require, and in his, her or their executors, administrators or assigns, upon the trusts, and for the ends, intents and purposes hereinbefore declared. AND IT IS HEREBY FURTHER DE-

Indemnity to
trustees.

No. IV.

*Marriage
Settlement upon
Trust for
Husband for
Life, remainders
to Wife and
Children, &c.*

CLARED, that every such new trustee or trustees, either before or after such assignment and transfer, shall have and exercise the same powers as if he or they had been originally appointed a trustee or trustees by these presents; and that no trustee hereby appointed, or to be appointed as aforesaid, shall be responsible for the acts, deeds or defaults of any co-trustee or co-trustees; nor for involuntary losses; nor for money received under receipts in which they shall join only for conformity. AND that the present or any future trustees or trustee shall and may reimburse themselves and each other out of the said trust moneys, or out of any moneys that may come to their respective hands by virtue of these presents, all costs and expenses incurred by them in the execution of the aforesaid trusts, or in relation thereto.

IN WITNESS, &c.

No. V.

MARRIAGE SETTLEMENT, BY WHICH £500, THE PROPERTY OF THE WIFE, AND ADVANCED TO THE HUSBAND, IS SECURED BY A POLICY OF ASSURANCE UPON HIS LIFE. £3,000, STOCK IS ALSO SETTLED FOR THE BENEFIT OF HUSBAND AND WIFE AND THE ISSUE OF THE MARRIAGE; THE PROCEEDS OF THE POLICY OF ASSURANCE ARE SETTLED UPON THE SAME TRUSTS.

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| <ol style="list-style-type: none"> 1. Parties. 2. Recital that intended wife is possessed of 3,000<i>l.</i> Three per cent. Consols, and 500<i>l.</i> sterling. 3. Of agreement that 500<i>l.</i> sterling is to be paid to husband upon his assigning policy of assurance upon his life to trustees, and that 3,000<i>l.</i> Three per cent. Consols should be transferred to trustees upon the trusts of the settlement. 4. That 3,000<i>l.</i> Three per cent. Consols have been transferred into trustees' names. 5. That husband has effected an assurance on his life for 1,000<i>l.</i> 6. Testatum, by which husband assigns policy. . Power of attorney. 8. Habendum. 9. Further testatum, by which it is declared that trustees shall stand | <p>possessed of 3,000<i>l.</i> Three per cent. Consols.</p> <ol style="list-style-type: none"> 10. Upon trust for intended wife until marriage. 11. Upon trust to invest, with power of varying securities. 12. Declaration of trust. 13. In case of no issue of marriage wife to have absolute power of appointment. 14. Trust for wife absolutely. 15. Declaration of trust of proceeds of policy of assurance. 16. Covenant from husband to keep up policy. 17. That he will do no act to endanger policy, 18. Power for trustees to renew policy in default of husband's so doing. 19. Power to change trustees. |
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Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*intended husband*) of, &c., of the first part, (*intended*

wife) of, &c., of the second part, and (*trustees*) of, &c., of the third part.

2. WHEREAS the said (*intended wife*) is possessed of the capital sum of 3,000*l.* Three per cent. Consolidated Annuities, and which were lately standing in her name in the books of the Governor and Company of the Bank of England, and is also possessed of the sum of 500*l.* sterling.

3. AND WHEREAS a marriage has been agreed upon, and is intended to be shortly had and solemnized between the said (*intended husband*), and the said (*intended wife*), and upon the treaty for the said intended marriage it was agreed that the said sum of 500*l.* sterling should be paid to the said (*intended husband*), upon his effecting an assurance upon his life in the sum of 1,000*l.*, and assigning the same upon the trusts hereinafter declared, and entering into a covenant for keeping up the policy of assurance thereof, in manner hereinafter appearing. AND it was at the same time agreed that the said capital sum of 3,000*l.* Three per cent. Consolidated Annuities should be transferred unto and into the names of the said (*trustees*), upon the trusts, and for the ends, intents and purposes hereinafter expressed and declared.

4. AND WHEREAS the said capital sum of 3,000*l.* Three per cent. Consolidated Bank Annuities has been duly transferred unto the said (*trustees*), and the same is now standing in their joint names in the books of the Governor and Company of the Bank of England.

5. AND WHEREAS the said (*intended husband*) has effected an assurance upon his life in the sum of 1,000*l.*, in the London Assurance Company, for the sum of 1,000*l.*

6. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, and of the sum of 500*l.* sterling, paid by the said (*intended wife*) to the said (*intended husband*) on or before the execution of these presents, the receipt of which the said (*intended husband*) hereby acknowledges, HE the said (*intended husband*) DOTH by these presents assign and transfer unto the said

No. V.

Marriage Settlement, by which Property of Wife advanced to Husband is secured by Policy on his Life, &c.

Recital that intended wife is possessed of 3,000*l.* Three per cent. Consols and 500*l.* sterling.

Of agreement that 500*l.* sterling is to be paid to husband upon his assigning policy of assurance on his life to trustees, and that 3,000*l.* Three per cent. Consols should be transferred to the trustees upon the trusts of the settlement.

That 3,000*l.* Three per cent. Consols have been transferred into trustees' joint names.

That husband has effected an assurance for 1,000*l.* on his life.

Testatum, by which husband assigns policy.

No. V.
 Marriage
 Settlement, by
 which Property
 of Wife
 advanced to
 Husband is
 secured by Policy
 on his Life, &c.

(*trustees*), ALL that the aforesaid deed poll or instrument in writing, purporting to be and being a policy of assurance, No. 27,294, under the hands and seals of three of the trustees or directors of the London Assurance Company, dated on or about the 15th day of August last, whereby the sum of 1,000*l.* is expressed to be assured by the said office, upon the life of the said (*intended husband*), and to be paid to his executors, administrators or assigns, within three calendar months next after satisfactory proof of his death shall have been received by the said directors, in consideration of the annual payment of £ to the said office during the life of the said (*intended husband*), on the 15th day of August in every year; together with all and every sum and sums of money which shall or may at any time or times become due or recoverable upon or by virtue of the said policy of assurance and premises. AND all the estate, right, title and interest, both legal and equitable, of him the said (*intended husband*) therein.

Power of
 attorney.

7. WITH FULL POWER for the said (*trustees*), and the survivor of them, his executors or administrators, as the true and lawful attorney and attorneys irrevocable of the said (*intended husband*), and in his name or in the name of his executors or administrators, to demand and enforce payment, and to receive all sum and sums of money that may become due or recoverable upon or by virtue of the said hereby assigned policy of assurance, and upon nonpayment thereof to use such lawful and equitable ways and means as may be deemed expedient in that behalf, and upon payment thereof to give good and sufficient releases and discharges for the same; and one or more attorney or attorneys for all, any or either of the purposes aforesaid to appoint, and such appointment at pleasure to revoke, he the said (*intended husband*) hereby ratifying and confirming, and promising and agreeing to ratify and confirm, all and whatsoever the said (*trustees*), or the survivor of them, his executors or administrators, or his or their attorney or attorneys, shall lawfully do or cause to be done in the premises, by virtue of these presents.

Habendum.

8. TO HAVE, HOLD, RECEIVE AND TAKE the said deed poll, policy of assurance, and all and singular other the said hereby assigned premises, together with all and every the sum and sums

of money to be received thereon or derived therefrom, unto the said (*trustees*), their executors, administrators and assigns, upon the trusts and for the ends, intents and purposes hereinafter declared.

No. V.

Marriage Settlement, by which Property of Wife advanced to Husband is secured by Policy on his Life, &c.

9. AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, it is hereby declared and agreed by and between the said parties to these presents, that the said (*trustees*), and the survivor of them, his executors or administrators, shall stand possessed of the said sum of 3,000*l.* Three per cent. Consolidated Annuities, upon the trusts, and for the ends, intents and purposes, and with, under and subject to the powers, provisoes, declarations and agreements hereinafter limited, expressed and declared of and concerning the same (that is to say),

Further testament, by which it is declared that trustees shall stand possessed of 3,000*l.* Three per cent. Consols.

10. UPON TRUST for the said (*intended wife*) until the solemnization of the said intended marriage, and immediately after the solemnization thereof,

Upon trust for intended wife until marriage.

11. UPON TRUST to permit the same to remain in its present state of investment, or to lay out and invest the same upon real or government securities, in the names of them the said (*trustees*), or the survivor of them, his executors or administrators, which said stocks, funds and securities it shall be lawful for the said (*trustees*), or the survivor of them, his executors or administrators, with the consent of the said (*intended husband*) and (*wife*) during their joint lives, and after the decease of either of them with the consent of the survivor, and after the decease of such survivor at the discretion of the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, to alter, vary and transpose as shall be deemed necessary or expedient, and shall stand possessed of the said trust moneys, stocks, funds and securities,

Upon trust to invest, with power to vary securities.

12. UPON TRUST [INSERT HERE *trust to pay interest to husband for life, with remainder to wife for life, in case of her surviving him, with remainder for children, as parents or the survivor shall by deed or will appoint; and in default thereof, for children, sons at twenty-one, and daughters at twenty-one or marriage, with provisoes for*

Declaration of trusts.

No. V. maintenance and advancement, *ut ante*, No. IV., clauses 6 to 11 inclusive, pp. 704, 705.]

Marriage
Settlement, by
which Property
of Wife
advanced to
Husband is
secured by Policy
on his Life, &c.

In case of no
issue of mar-
riage, wife to
have absolute
power of
appointment.

13. PROVIDED ALWAYS, that in case there shall be no child of the said (*intended husband*) by the said (*intended wife*), or being such, every one of them who shall be a son or sons shall die under the age of twenty-one years, or who being a daughter or daughters shall die under that age and unmarried, then the said (*trustees*), and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, shall stand possessed of the said trust moneys, stocks, funds, and securities, UPON TRUST for such person or persons, and for such ends, intents and purposes, and in such manner and form (but without prejudice to the life interest of the said (*intended husband*), by virtue of these presents), as the said (*intended wife*), alone, notwithstanding her coverture, shall from time to time or at any time by deed or will appoint; and in default of such appointment, and subject thereto,

Trust for wife
absolutely.

14. UPON TRUST for the said (*intended wife*), her executors, administrators and assigns, and to pay and assign the same to her them accordingly.

Declaration of
trust of proceeds
of policy of
assurance.

15. AND IT IS HEREBY FURTHER DECLARED AND AGREED, that the said (*trustees*) and the survivor of them, his executors or administrators, or other the said trustees or trustee for the time being, do and shall stand and be possessed of all such sum and sums of money as shall be received by them, upon or by virtue of the said hereby assigned policy of assurance, with such and the same powers of investment and varying securities, and subject to the same trusts (excepting the life interest of the said (*intended husband*),) and also to the like powers of appointment, and limitations over in default of appointment, and provisions for maintenance, as are hereinbefore expressed, declared and contained of and concerning the said sum of 3,000*l*. Three per cent. Consolidated Annuities, or the stocks, funds and securities in or upon which the same may be invested, or as near thereto as the death of parties and other circumstances will then admit of.

16. AND the said (*intended husband*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*trustees*), their executors, administrators and assigns, that he the said (*intended husband*) shall and will from time to time, and at all times during the term of his natural life, at his own proper costs and charges, regularly pay the annual premium hereafter to grow due upon or by virtue of the said hereby assigned policy of assurance, as and when the same shall become payable; and also shall and will at all times when thereunto requested by the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, produce or show forth to them or him, the receipts or vouchers for the premiums paid in respect of such assurance and assurances.

No. V.
 Marriage
 Settlement, by
 which Property
 of Wife
 advanced to
 Husband is
 secured by Policy
 on his Life, &c.
 —
 Covenant from
 husband to keep
 up policy.

17. AND ALSO that he the said (*intended husband*) will not do nor permit any act, deed, matter or thing whatsoever, whereby the said deed poll or policy of assurance hereby assigned, or the assurance thereby effected, can be vacated, impeached, prejudiced or endangered in any manner howsoever.

That he will
 do no act to
 endanger policy.

18. AND IT IS HEREBY DECLARED AND AGREED by and between the said parties hereto, that in case the said (*intended husband*) shall neglect to pay such premium, or to produce and show forth such receipts or vouchers for the same as aforesaid, then and in such case it shall lawful for the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, to effect such assurance or assurances in the aforesaid or any other assurance office, and to obtain any other policy or policies of assurance in the name of them the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, or in the name of the said (*intended husband*), and so from time to time to keep the life of the said (*intended husband*) constantly insured; AND do and shall out of the trust moneys which shall come to their or his hands, retain and reimburse themselves all such costs, charges and expenses as they the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents shall

Power for
 trustees to
 renew policy
 in default of
 husband's
 so doing.

No. V. expend in effecting or keeping such policy or policies of assurance
on foot as aforesaid or in relation thereto.

*Marriage
Settlement, by
which Property
of Wife
advanced to
Husband is
secured by Policy
on his Life, &c.*

19. PROVIDED ALSO [INSERT HERE *power to change trustees,*
as in last precedent, clause 16, p. 706.]

IN WITNESS, &c.

No. VI.

SETTLEMENT OF STOCK, WITH POWER FOR TRUSTEES TO ADVANCE ANY SUM NOT EXCEEDING £2,000, TO THE INTENDED HUSBAND, UPON HIS EFFECTING A POLICY OF ASSURANCE TO THE AMOUNT OF THE SUMS ADVANCED, AND ASSIGNING THE SAME TO THE TRUSTEES OF THE SETTLEMENT.

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| <ol style="list-style-type: none"> 1. Parties. 2. Recital of intended marriage, and of agreement to settle 4,000<i>l</i>. Three per cent. Consols, the property of the husband, and 3,750<i>l</i>. Three per cent. Reduced, the property of the wife's father, upon the trusts of the settlement. 3. Testatum, by which it is declared that trustees are to stand possessed of 4,000<i>l</i>. Three per cent. Consols, and 3,750<i>l</i>. Three per cent. Reduced, &c. 4. Proviso empowering trustees to advance the husband any sum not exceeding 2,000<i>l</i>. upon the security of a policy of assurance upon his life. | <ol style="list-style-type: none"> 5. Proviso, that in case of there being no children of the intended marriage who shall acquire a vested interest in trust moneys, 6. Upon trust, as to 4,000<i>l</i>. Three per cent. Consols, for such persons as husband shall by deed or will appoint. 7. Ultimate trust for husband absolutely. 8. Upon trust, as to 3,750<i>l</i>. for such persons as wife shall by deed or will appoint. 9. Ultimate trust for her next-of-kin under the Statute of Distributions. |
|---|---|

1. THIS INDENTURE, made the day of A.D. 18 , Parties BETWEEN (*intended husband*) of, &c., of the first part, (*father of intended wife*) of, &c., of the second part, (*intended wife*), spinster, of, &c., of the third part, and (*trustees*) of the fourth part.

2. WHEREAS a marriage hath been agreed upon and is intended to be shortly had and solemnized between the said (*intended hus-* Recital of intended marriage, and of

No. VI.

Marriage Settlement, with Power to Trustees to advance Sums not exceeding £3,000, to Husband upon his effecting a Policy of Insurance, &c.

agreement to settle 4,000*l*. Three per cent. Consols, the property of the husband, and 3,750*l*. Three per cent. Reduced, the property of the wife's father, upon the trusts of the settlement.

Testatum.

band) and the said (*intended wife*), and upon the treaty for the said marriage it was agreed that the capital sum of 4,000*l*. Three per cent. Consolidated Annuities, the property of the said (*intended husband*), and the capital sum of 3,750*l*. Three per cent. Reduced Annuities, the property of the said (*wife's father*), should be transferred unto and into the names of the said (*trustees*), upon the trusts hereinafter declared, and which hath been accordingly done, and the same sums are now respectively standing in the joint names of them the said (*trustees*), in the books of the Governor and Company of the Bank of England.

3. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, it is hereby declared and agreed by and between the said parties to these presents, that the said (*trustees*), and the survivor of them, his executors and administrators, shall stand possessed of the said sum of 4,000*l*. Three per cent. Consolidated Annuities, and also of the said sum of 3,750*l*. Three per cent. Reduced Annuities, UPON THE TRUSTS and for the ends, intents and purposes hereinafter limited, expressed and declared of and concerning the same (that is to say), UPON TRUST, as to the said sum of 4,000*l*. Three per cent. Consolidated Annuities, for the said (*intended husband*), until the solemnization of the said intended marriage; and as to the said sum of 3,750*l*. Three per cent. Reduced Annuities, UPON TRUST for the said (*wife's father*) until the solemnization of the said intended marriage, and after the solemnization thereof, UPON TRUST that the said (*trustees*), or the survivor of them, &c. [HERE CONTINUE *trust for investment and varying securities; also trusts in favour of husband and wife, and issue of marriage, with like powers of appointment and provisions for maintenance, ut ante*, No. IV. clause 6 to 11 inclusive, pp. 704, 705.]

Proviso empowering trustees to advance the husband any sum not exceeding 2,000*l*. upon the security of a policy of assurance upon his life.

4. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED AND AGREED by and between the said parties hereto, that the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, do and shall at the request of the said (*intended husband*), advance to him from time to time, as he shall require the same, any sum or sums of money, not exceeding in the whole the sum of 2,000*l* sterling, upon his effecting a policy of assurance upon his life, to the

amount of the sums so advanced, and assigning such policy to the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees for the time being of these presents, as a security for the repayment thereof, and at the same time covenanting to pay the annual premiums as and when the same shall become due and payable, so long as the sum or sums so advanced to him, or any part of the same, shall remain owing from him, and authorizing the trustees or trustee for the time being of these presents, in case of his default, to apply a sufficient portion of the interest, dividends and annual produce of the aforesaid trust moneys, stocks, funds and securities for that purpose. AND all sum and sums of money to be received in respect of such policy or policies of assurance shall be received for the said trustees or trustee for the time being of these presents, and be held by them upon such and the same trusts, ends, intents and purposes, and with, under and subject to the same powers, provisoes, declarations and agreements as are hereinbefore declared and contained of and concerning the aforesaid trust moneys, stock, funds and securities, or as near thereto as the death of parties and other circumstances will then admit of.

No. VI.

Marriage Settlement, with Power to Trustees to advance Sums not exceeding £2,000, to Husband upon his effecting a Policy of Assurance, &c.

5. PROVIDED ALSO, that in case there shall be no child or children of the said (*intended husband*) by the said (*intended wife*), or being such, every one of them who being a son or sons shall die under the age of twenty-one years, or who being a daughter or daughters shall die under that age and unmarried, then the said (*trustees*), and the survivor of them, his executors or administrators, shall stand and be possessed of the sum of 4,000*l.* Three per cent. Consolidated Annuities, and also of the said sum of 3,750*l.* Three per cent. Reduced Annuities, or of the stocks, funds and securities in or upon which the same sums shall be then respectively invested,

In case of the : being no children of the intended marriage who shall acquire a vested interest in trust money.

6. UPON TRUST, as to the said sum of 4,000*l.* Three per cent. Consolidated Annuities, for such person or persons, and upon and for such trusts, ends, intents and purposes, and in such manner and form (but without prejudice to the life interest of the said (*intended wife*), by virtue of these presents), as the said (*intended husband*) shall from time to time or at any time by deed or

Upon trust as to 4,000*l.* Three per cent. Consols for such persons as husband shall by deed or will appoint.

No. VI.

will appoint; and in default of such appointment and subject thereto,

Marriage Settlement, with Power to Trustees to advance Sums not exceeding £2,000, to Husband upon his effecting a Policy of Assurance, &c.

7. UPON TRUST for the said (*intended husband*), his executors, administrators and assigns, and to pay and assign the same unto him or them accordingly.

Ultimate trust for husband absolutely.
Upon trust, as to 3,750*l.*
Three per cent.
Reduced, for such persons as wife shall by deed or will appoint.

8. AND AS, TO FOR AND CONCERNING the said sum of 3,750*l.* Three per cent. Reduced Annuities, or the stocks, funds or securities in or upon which the same shall be then invested, UPON TRUST for such person or persons, and upon and for such trusts, ends, intents and purposes, and in such manner and form (but without prejudice to the life interest of the said (*intended husband*), by virtue of these presents), as the said (*intended wife*) shall from time to time or at any time, and notwithstanding her coverture, by deed or will appoint; and in default of such appointment and subject thereto,

Ultimate trust for her next-of-kin under the Statute of Distributions.

9. UPON TRUST for the person or persons who, at the time of the decease of the said (*intended wife*), would be entitled to her personal estate under the Statute of Distributions. [ADD POWER to change trustees, *ut ante*, No. IV., clause 16, p. 706.]

IN WITNESS, &c.

No. VII.

SETTLEMENT, BY WHICH A BOND DEBT, A DEBT DUE ON A PROMISSORY NOTE, AND ALSO SIMPLE CONTRACT DEBTS, ARE ASSIGNED TO TRUSTEES UPON THE TRUSTS OF THE SETTLEMENT.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital that intended wife is entitled to bond debt. 3. That she is entitled to a debt secured by a promissory note. 4. That certain persons are indebted to her by simple contract. 5. Of intended marriage. 6. Testatum, by which the bond and simple contract debts are assigned to trustees. | <ol style="list-style-type: none"> 7. First habendum; bond debt. 8. Second habendum; simple contract debts. 9. Power of attorney. 10. Power to compound debts. 11. Declaration that trustees shall stand possessed of bond, promissory note, and simple contract debts upon trust, &c. 12. Trust to invest, and to vary securities. |
|--|---|

1. THIS INDENTURE, made the day of A.D. 18 , Parties BETWEEN (*intended husband*), of, &c., of the first part, (*intended wife*) of, &c., spinster, of the second part, and (*trustees*) of, &c., of the third part,

2. WHEREAS, by a certain bond or obligation in writing, dated the day of in the year 18 , under the hand and seal of (*obligor*) of, &c., the said (*obligor*) became bound unto the said (*intended wife*), in the penal sum of 2,000*l.*, with a condition thereunto annexed for making void the same on payment by the said (*obligor*), his heirs, executors or administrators, unto the said (*intended wife*), her executors, administrators or assigns, of the sum

Recital that intended wife is entitled to bond debt.

No. VII. of 1,000*l.*, with interest for the same, at the rate of 5*l.* for every 100*l.* by the year, at the time and in manner therein mentioned, but in payment whereof default was made.

Marriage Settlement, by which Bond Debt, Debt due on Promissory Note and simple Contract Debts are assigned to Trustees upon Trusts.

That she is entitled to a debt secured by promissory note.

That certain persons are indebted to her by simple contract.

3. AND WHEREAS by a certain promissory note in writing under the hand of (*debtor*), dated the day of in the year 18 , the said (*debtor*) promised to pay to the said (*intended wife*), or order on demand, the sum of 500*l.*, with interest for the same, at the rate of 5*l.* for every 100*l.* by the year.

4. AND WHEREAS the several persons specified and set forth in the schedule hereunder written are indebted to the said (*intended wife*) in the several sums set opposite to their respective names, for goods sold and delivered, work and labour done and performed, and also upon an account stated, and for divers other good and valuable considerations.

Of intended marriage.

5. AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly solemnized, between the said (*intended husband*) and the said (*intended wife*), and upon the treaty for the said intended marriage it was agreed that the said bond, and also the said simple contract debts, should be assigned, and the said promissory note be passed over and indorsed unto the said (*trustees*), (and which said promissory note hath been passed over and indorsed accordingly), (*a*) to be held by them upon the trusts and for the ends, intents and purposes hereinafter limited, expressed and declared of and concerning the same.

Testatum, by which the bond and simple contract debts are assigned to trustees.

6. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, and also in consideration of the sum of 5*s.* sterling, paid by the said (*trustees*) to the said (*intended wife*), on the execution hereof, the receipt of which is hereby acknow-

Practical remarks.

(*a*) The promissory note being made payable to order, or bearer, will pass by simple indorsement, which will confer the legal interest, and enable the indorsee to support an action-at-law against the drawer; but if it had been made payable to the drawee only, then an indorsement over would confer no right of action to the indorsee; neither would an actual assignment pass more than a mere chose in action, conferring an equitable interest, but affording no legal remedy. If, however, a power of attorney were annexed to the assignment, then the assignee could sue the drawer at law in the name of the assignor.

ledged, SHE the said (*intended wife*) doth by these presents assign and transfer unto the said (*trustees*), FIRST, all that the aforesaid bond or obligation, together with the full force and benefit thereof; and also all and every sum and sums of money now due or hereafter to become due, either for principal or interest, in respect of the said bond; and all the estate, right, title and interest, both legal and equitable, of her the said (*intended wife*) therein; SECONDLY, all and singular the debts and sums of money specified and set forth in the schedule hereunder written, together with interest (if any) now due, or which shall at any time hereafter accrue due in respect of the same; AND all the estate, right, title and interest, both legal and equitable, of her the said (*intended wife*) therein.

No. VII.
 Marriage
 Settlement, by
 which Bond Debt,
 Debt due on
 Promissory Note
 and simple
 Contract Debts
 are assigned
 to Trustees upon
 Trusts.

7. TO HAVE, HOLD, RECEIVE AND TAKE the said bond or obligation, sum and sums of money, and all and singular other the premises hereby assigned unto the said (*trustees*), their executors administrators and assigns, upon the trusts, and for the ends, intents and purposes hereinafter declared and contained.

First habendum:
 bond debt.

8. AND TO HAVE, HOLD, RECEIVE AND TAKE the said debts or sums of money, and all and singular other the premises secondly hereinbefore assigned, unto the said (*trustees*), their executors, administrators and assigns, as and for their proper moneys, goods, chattels and effects, nevertheless upon and for the trusts, ends, intents and purposes hereinafter declared and contained.

Second habendum:
 simple contract debts.

9. AND for better enabling the said (*trustees*), to receive and enforce payment of the said bond and promissory note, and to collect and get in the said simple contract debts and premises hereby assigned, (*b*) THEY the said (*intended husband*) and (*intended wife*), do by these presents constitute and appoint the said (*trustees*), and the survivor of them, his executors or administrators, the true and lawful attorneys and attorney irrevocable of them the said (*intended husband*) and (*intended wife*), and in their, or either of their names or

Power of
 attorney.

(*b*) As the assignment of bond, and also of simple contract debts will only pass mere choses in action, a power of attorney to sue in the assignor's name is absolutely requisite, in order to enable an assignee to recover at law.

Power of
 attorney requisite
 to enable
 assignee to sue
 at law.

No. VII.

Marriage
Settlement, by
which Bond Debt,
Debt due on
Promissory Note
and simple
Contract Debts
are assigned
to Trustees upon
Trusts.

name, or in the names or name of their executors or administrators, to ask, demand, sue for, recover and receive, of and from the said (*obligor*), his executors or administrators, as also from the several persons specified in the schedule hereunder written, or other the person or persons to whom it shall or may belong to pay the same, the moneys secured by the said bond and promissory note, and also the said several debts or sums of money specified in the said schedule, or any or either of them, and to use and take all such lawful and equitable way and means for obtaining and enforcing payment of the same, as may be deemed necessary or expedient in that behalf; and on payment thereof to give good and sufficient releases and discharges for the same; and also with full power to appoint a substitute or substitutes for all, any or either of the purposes aforesaid, and such substitution from time to time at pleasure to revoke, THEY the said (*intended husband*) and (*intended wife*) hereby ratifying and confirming, and promising and agreeing to ratify and confirm, all and whatsoever the said (*trustees*), or the survivor of them, his executors or administrators, or his or their attorneys or attorney, shall lawfully do or cause to be done in the premises by virtue of these presents.

Power to com-
pound debts.

10. AND also with power and authority for the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, in case they or he shall in their or his discretion think proper so to do, to compound or compromise any of the debts hereby assigned, or to give time for payment, or take security for such payment; as also to refer to arbitration any dispute that may arise in respect thereof.

Declaration that
trustees shall
stand possessed
of bond, prom-
issory note,
and simple
contract debts,
upon trust,

11. AND IT IS HEREBY DECLARED AND AGREED by and between the said parties to these presents, that the said (*trustees*), and the survivor of them, his executors or administrators, do and shall stand possessed of the said bond or obligation, the said promissory note, simple contract debts, and all and singular the premises,

To invest and
vary securities.

12. UPON TRUST either to permit the said moneys secured by the said bond and promissory note to remain in their present state of investment, or to call in and invest the same in manner herein-

after mentioned, and also to collect and get in the said moneys due in respect of the said several scheduled debts, and lay out and invest the same, and also all the moneys due on the said bond and promissory note, when the same shall be paid off, in real or government securities, or in some of the public stocks or funds; which said stocks, funds and securities it shall be lawful for the said (*trustees*), or the survivor of them, his executors or administrators, by and with the consent of the said (*intended husband*) and (*intended wife*), during their lives, and after the decease of either of them, with the consent of the survivor, and, after the decease of such survivor, at the discretion of the trustees or trustee for the time being of these presents, to alter, vary and transpose as they or he may deem expedient, and do and shall stand and be possessed of the said trust moneys, stocks, funds and securities, *Upon the trusts*, and for the ends, intents and purposes, and with, under and subject to the powers, provisoes, charges, declarations and agreements herein-after declared and contained (that is to say), [HERE INSERT TRUSTS; ALSO *powers to change trustees, ut ante*, No. IV., clause 16, p. 706.]

No. VII.
*Marriage
 Settlement, by
 which Bond Debt,
 Debt due on
 Promissory Note
 and simple
 Contract Debts
 are assigned
 to Trustees upon
 Trusts.*

IN WITNESS, &c.

THE SCHEDULE TO WHICH THE WITHIN-WRITTEN INDENTURE REFERS.

Amount due.	From whom due.
£ s. d.	
20 15 2	A.B., of &c.
&c. &c. &c.	&c. &c. &c.

No. VIII.

SETTLEMENT, BY WHICH TWELVE SHARES IN THE GREAT WESTERN RAILWAY, THE PROPERTY OF THE INTENDED HUSBAND, AND A LEGACY OF £1,500, THE PROPERTY OF THE INTENDED WIFE, ARE TRANSFERRED TO TRUSTEES UPON THE TRUSTS OF THE SETTLEMENT, THE INTENDED HUSBAND COVENANTING TO SECURE THE INTENDED WIFE THE SUM OF £1,500 IN CASE OF HER SURVIVING HIM; WITH SHORT POWER OF ATTORNEY.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital that intended husband is entitled to twelve shares in the Great Western Railway. 3. Recital of bequest of legacy. 4. Of death of testator and probate of his will. 5. Of intended marriage. 6. Of transfer of railway shares to trustees. | <ol style="list-style-type: none"> 7. Testatum: intended wife, with the assent of executor, assigns legacy. 8. Habendum to trustees upon the trusts of the settlement, with short power of attorney. 9. Further testatum, by which intended husband covenants for payment of 1,500<i>l.</i> to intended wife in case of her surviving him. |
|---|---|

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
 BETWEEN (*intended husband*), of, &c., of the first part, (*intended wife*) of, &c., of the second part, (*executor of father of intended wife*) of, &c., of the third part, and (*trustees*) of, &c., of the fourth part.

Recital
 that husband
 is entitled to
 twelve shares
 in the Great
 Western Rail-
 way.

2. WHEREAS the said (*intended husband*) is entitled to twelve shares in the Great Western Railway.

3. AND WHEREAS (*testator*), the father of the said (*intended wife*), by his last will dated the day of 18 , bequeathed the sum of 1,500*l.* sterling, to be paid to her at the expiration of three years next after his decease, with interest in the meantime, at the rate of 4*l.* per cent. per annum.

No. VIII.

Marriage Settlement, by which Property of intended Husband and intended Wife is transferred to Trustees upon Trusts, &c

4. AND WHEREAS the said (*testator*) died on or about the day of last, without having altered or revoked his said will, which was duly proved by the said (*executor*), the sole executor named therein, in the Prerogative Court of the Archbishop of Canterbury, on the day of last.

Recital of bequest of legacy.

Of death of testator, and probate of his will.

5. AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly solemnized, between the said (*intended husband*) and the said (*intended wife*), and upon the treaty for the said intended marriage it was agreed that the said legacy or sum of 1,500*l.*, and also the said railway shares, should be assigned to the said (*trustees*), upon the trusts hereinafter declared, and that the said (*intended husband*) should enter into the covenant hereinafter contained for securing to the said (*intended wife*), the sum of 1,500*l.*, in case she should happen to survive him, in manner hereinafter appearing.

Of intended marriage.

6. AND WHEREAS the said (*intended husband*) hath by deed poll under his hand and seal, bearing even date with these presents, transferred the said twelve shares in the Great Western Railway unto the said (*trustees*), which transfer hath been duly registered according to act of Parliament.

Of transfer of railway shares to trustees.

7. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, SHE the said (*intended wife*), with the assent of the said (*executor*), (*a*) as such executor as nforesaid,

Testatum: intended wife, with assent of executor, assigns legacy.

(*a*) A bequest of a legacy is not complete without the assent of the executor. Such assent may be given as well by parol as by writing, and it may be either express or implied, the law having prescribed no precise form by which it is to be given; still it will be advisable, in a case like the one above suggested, to procure the actual concurrence of the executors, and thus prevent all questions from arising upon the subject. In case, however, there are several executors, it is not necessary that more than one of them should assent; the assent of one

Bequest of legacy incomplete without the assent of the executor.

No. VIII. (testified by his being a party hereto), DOTH by these presents assign and transfer unto the said (*trustees*), ALL that the aforesaid legacy or sum of 1,500*l.* so as aforesaid bequeathed to the said (*intended wife*), in and by the said hereinbefore in part recited will: and all and every sum and sums of money to become due and payable in respect thereof; and all the estate, right, title and interest, both legal and equitable, of her the said (*intended wife*) therein.

Marriage Settlement, by which Property of intended Husband and intended Wife is transferred to Trustees upon Trusts, &c.

Habendum to trustees upon the trusts of settlement.

8. TO HAVE, HOLD, RECEIVE AND TAKE the said legacy or sum of 1,500*l.*, and all and singular other the said hereby assigned premises, unto the said (*trustees*), their executors, administrators and assigns absolutely, and with full power for the said (*trustees*), and the survivor of them, his executors or administrators, as the attorneys or attorney irrevocable of her the said (*intended wife*), or of the said (*intended husband*) and (*intended wife*), and in her, his or their name or names, but upon and for the trusts, ends, intents and purposes hereinafter declared, to receive, sue for and recover the said legacy or sum of 1,500*l.*, as and when the same shall become due and payable, and to give good and effectual releases and discharges for the same; and do and shall stand possessed thereof upon the trusts hereinafter declared.

Further testament, by which intended husband covenants for payment of 1,500*l.* to his wife in case of her surviving him.

9. AND THIS INDENTURE ALSO WITNESSETH, that for the considerations aforesaid, the said (*intended husband*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*trustees*), their executors, administrators and assigns, that in case the said intended marriage shall take effect, and the said (*intended wife*) shall survive the said (*intended husband*), the execu-

executor being sufficient to bind the rest. It may be given at any time, as well before as after probate of the will (Godb. pl. 2, c. 20, s. 1, 2 Wms. Exors. 286; Went. Off. Exors. 82, 14th edit.), and generally speaking such assent, if once given, cannot afterwards be retracted. Still, if an executor were to assent under a reasonable supposition that the assets were sufficient to answer all demands, and unknown debts are afterwards unexpectedly claimed, which occasion a deficiency, the executor would, under such circumstances, be allowed to retract his assent: (1 Rep. Leg. 743, 3rd edit.) But if an executor were to refuse his assent without sufficient cause, a court of equity would compel him to give it: (Com. Dig. "Admon." 6; 2 Hughes Pract. Sales, 92), and most probably compel him to pay all the costs incurred by an unjust refusal. See further observations as to the assent of executors, *ante*, p. 399, note (a.)

tors or administrators of the said (*intended husband*), shall and will well and truly pay or cause to be paid unto the said (*intended wife*) the sum of 1,500*l.* sterling, for her own absolute use and benefit. [INSERT HERE *declaration that trustees shall stand possessed of railway shares, and the legacy, upon trust for investment, with power of varying securities, as in last precedent, clauses 11, 12, pp. 722, 723; INSERT ALSO the trust of the settlement, and power to change trustees, ut ante, No. IV., clauses 7 to 16 inclusive, pp. 704 to 707.*]

No. VIII.

Marriage
Settlement, by
which Property
of intended
Husband and
intended Wife is
transferred
to Trustees upon
Trusts, &c.

IN WITNESS, &c.

No. IX.

SETTLEMENT, BY WHICH £2,000, THE PROPERTY OF THE INTENDED WIFE'S FATHER, IS SETTLED UPON THE TRUSTS OF THE SETTLEMENT, THE INTENDED HUSBAND COVENANTING TO SETTLE AN ANNUITY OF £150 UPON INTENDED WIFE. VARIATION WHERE THE INTENDED HUSBAND COVENANTS TO SECURE TO THE INTENDED WIFE, IN CASE OF HER SURVIVING HIM, A SUM EQUAL TO HER MARRIAGE PORTION.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of intended marriage: that intended wife's father had paid intended husband 1,500<i>l.</i> as her marriage portion, and agreed to settle 2,000<i>l.</i> on the trusts of the settlement, and that the intended husband had agreed to settle an annuity of 150<i>l.</i> on intended wife. 3. Testatum: father covenants to pay 1,000<i>l.</i> by four equal half-yearly instalments, and to bequeath 1,000<i>l.</i> by his will. 4. Proviso, that if intended wife's father dies intestate, and her distributive share of his effects amounts to 1,000<i>l.</i> or more, it is to be taken in satisfaction of the 1,000<i>l.</i> covenanted to be bequeathed. 5. Declaration that trustees shall stand possessed of trust moneys. 6. Upon trust to invest, with power of varying securities. | <ol style="list-style-type: none"> 7. In case of there being no children of the intended marriage who shall acquire a vested interest in trust moneys, 8. Upon trust for such persons as wife, notwithstanding her coverture, shall by deed or will appoint. 9. Ultimate trust for wife's personal representatives. 10. Further testatum, by which intended husband covenants to secure intended wife an annuity of 150<i>l.</i> 11. Covenant that intended husband will secure annuity by deed or will. |
|---|---|

Additional Clause.

- A. Covenant from intended husband to secure to intended wife a sum equal to her marriage portion in the event of her surviving him.

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*intended husband*) of, &c., of the first part, (*intended*

wife's father) of, &c., of the second part, (*intended wife*) of the third part, and (*two trustees*), of the fourth part.

No. IX.

Marriage Settlement, by which £2,000, Property of intended Wife's Father, is settled upon Trusts of Settlement, intended Husband covenanting to settle Annuity.

2. WHEREAS a marriage hath been agreed upon, and is intended to be shortly solemnized, between the said (*intended husband*), and the said (*intended wife*), and upon the treaty for the said intended marriage, the said (*father*) agreed to pay unto the said (*intended husband*), the sum of 1,500*l.* for the portion of the said (*intended wife*), and also to settle the sum of 2,000*l.* sterling, upon trusts for the benefit of the said (*intend husbanded*) and the said (*intended wife*), and the issue of the said intended marriage, in manner hereinafter mentioned; and the said (*intended husband*), at the same time agreed to settle a life annuity of 150*l.* upon the said (*intended wife*), in the event of her surviving him, in manner hereinafter appearing.

*Recital of intended marriage; that intended wife's father had paid intended husband 1,500*l.* as her marriage portion, and agreed to settle 2000*l.* on the trusts of the settlement, and that the intended husband had agreed to settle an annuity of 150*l.* on intended wife.*

*Testatum: father covenants to pay 1,000*l.* by four equal half-yearly instalments, and to bequeath 1,000*l.* by his will.*

3. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, and for making some provision for the said (*intended husband*) and (*intended wife*), and the issue of the said intended marriage, the said (*father*) DOTH hereby, for himself, his heirs, executors, and administrators, covenant with the said (*trustees*), their executors, administrators and assigns, and also with the said (*intended husband*), his executors and administrators, that he the said (*father*), his heirs, executors or administrators, shall and will, within the space of two years from the day of the date hereof, well and truly pay or cause to be paid unto the said (*trustees*), or the survivor of them, his executors or administrators, the sum of 1,000*l.* sterling, by four equal half-yearly instalments of 250*l.* each, on the 29th day of September, and the 25th day of March, in each year, together with interest for the same, at the rate of 4*l.* for every 100*l.* by the year, until the whole of the said sum of 1,000*l.* shall be paid off and discharged; the first half-yearly instalment to be made on the 25th day of March next ensuing; AND FURTHER that he the said (*father*) shall and will, either in his lifetime, or by his last will and testament, pay or bequeath unto the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, the sum of 1,000*l.* sterling, and, if

No. IX.

Marriage Settlement, by which £2,000, Property of intended Wife's Father, is settled upon Trusts of Settlement, intended Husband covenanting to settle Annuity.

Proviso, that if intended wife's father dies intestate, and her distributive share of his effects amounts to 1,000*l.* or more, it is to be taken in satisfaction of the 1,000*l.* covenanted to be bequeathed.

Declaration that trustees shall stand possessed of trust moneys.

Upon trust, to invest, with power of varying securities.

bequeathed by will, to be paid within twelve calendar months next after the decease of the said (*father*.)

4. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that in case the said (*father*) shall die intestate as to the whole, or any part of his personal estate, and the distributive share of the said (*intended wife*) shall amount to or exceed the said sum of 1,000*l.*, then such distributive share shall be deemed to be in full satisfaction of the said sum of 1,000*l.* so covenanted to be bequeathed to the said (*trustees*) as aforesaid; and in case the said distributive share shall fall short of the said sum of 1,000*l.*, then such distributive share shall be deemed a part payment and satisfaction of the said sum of 1,000*l.*, to the extent which such distributive share is sufficient to cover; and the residue shall be made good, and be paid and payable as a specialty debt, out of the real and personal assets of the said (*father*); and such distributive share shall be paid into the hands of the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents.

5. AND IT IS HEREBY DECLARED AND AGREED by and between the said parties to these presents, that the said (*trustees*), and the survivor of them, his executors or administrators, do and shall stand and be possessed of the said sum of 2,000*l.*, so covenanted to be settled and assured as aforesaid (and whether the said last-mentioned sum of 1,000*l.* so covenanted to be paid or bequeathed by the said (*father*) to the said (*trustees*), shall be paid by him the said (*father*) to the said trustees, or other the trustees or trustee for the time being of these presents in his lifetime, or be bequeathed to them or her by the said (*father*) by his said will, or the said last-mentioned sum of 1,000*l.* or any part of the same, shall devolve upon the said (*intended wife*), as her distributive share as aforesaid, in default of such payment or bequest as aforesaid), UPON THE TRUSTS, and for the ends, intents and purposes hereinafter expressed and declared of and concerning the same (that is to say),

6. UPON TRUST for the said (*father*), until the solemnization of

the said intended marriage, and after the solemnization thereof, [INSERT *trusts for investment, with power of varying securities, ut ante*, No. V., clause 11, p. 711; AND THEN INSERT TRUSTS, *ut ante*, No. IV., clauses 7 to 12, pp. 704, 705.]

No. IX.

Marriage Settlement, by which £2,000, Property of intended Wife's Father, is settled upon Trusts of Settlement, intended Husband covenanting to settle Annuity.

7. PROVIDED ALSO, AND IT IS HEREBY FURTHER DECLARED, that in case there shall be no children or child of the said intended marriage, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, *then* the said (*trustees*), and the survivor of them, his executors or administrators, shall stand possessed of the said trust-moneys, stocks, funds, and securities,

In case of there being no children of the intended marriage who shall acquire a vested interest in the trust moneys,

8. UPON TRUST for such person or persons, and for such trusts, ends, intents and purposes, and in such manner and form (but without prejudice to the life interest of the said (*intended husband*) by virtue of these presents), as the said (*intended wife*) shall from time to time, or at any time, and notwithstanding her coverture, by deed or will appoint; and in default of such appointment, and subject thereto,

Upon trust for such persons as wife, notwithstanding her coverture, shall by deed or will appoint.

9. UPON TRUST for the person or persons, who, at the time of the decease of the said (*intended wife*), will be entitled to her personal estate, under the Statute of Distributions.

Ultimate trust for wife's personal representatives.

10. AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the said intended marriage, and of the sum of 1,500*l.* sterling, so as aforesaid paid by the said (*father*) to the said (*intended husband*) on the execution hereof, the receipt of which the said (*intended husband*) hereby acknowledges, and therefrom doth by these presents release, exonerate and for ever discharge the said (*father*), his heirs, executors and administrators, HE the said (*intended husband*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*trustees*), their executors, administrators and assigns, that in case the said intended marriage shall take effect, and the said (*intended wife*) shall survive the said (*intended husband*), then the heirs, executors or

Further testatum, by which intended husband covenanta to secure intended wife an annuity of 150*l.*

No. IX.

Marriage Settlement, by which £2,000, Property of intended Wife's Father is settled upon Trusts of Settlement, intended Husband covenanting to settle Annuity.

administrators of the said (*intended husband*) (*a*) shall and will yearly and every year during the term of her natural life, well and truly pay or cause to be paid unto the said (*intended wife*) and her assigns, one clear annuity or yearly sum of 150*l.* sterling for her own use and benefit, clear of all deductions whatsoever for or in respect of any present or future taxes, charges, assessments and impositions, and whether the same be of the nature of those now in being, or of any other nature or kind whatever; the same annuity to be paid by four equal quarterly payments, on the 25th day of December, the 25th day of March, the 24th day of June, and the 29th day of September, in every year; the first quarterly payment to be made on such of the said days of payment as shall first happen after the death of the said (*intended husband*), together with a proportionate part of the said annuity of 150*l.* from the time that shall elapse between the quarterly day of payment next preceding the decease of the said (*intended wife*), and the time of her decease.

That intended husband will secure annuity by deed or will.

11. AND FURTHER, that he the said (*intended husband*) shall and will, either by deed or by will, well and effectually secure (*b*) and assure the said annuity of 150*l.* unto the said (*intended wife*), at the respective times and in manner hereinbefore mentioned, by making the same a specific lien or charge upon the whole, or a sufficient portion of the real and personal estate of him the said (*intended husband*), with proper and effectual powers and remedies for recovering and enforcing the payment of the same. [INSERT HERE *power to change trustees, ut ante*, No. IV., clause 16, p. 706.]

Covenant from intended husband to secure intended wife a sum equal to her marriage portion in the event of her surviving him.

(*a*) If the intended wife is to be entitled to a gross sum of money in the event of her surviving intended husband, insert here—

A. “shall and will within six calendar months after his decease, well and truly pay or cause to be paid unto the said (*intended wife*) the sum of 1,500*l.* sterling for her own separate use and benefit; AND ALSO ”

(*b*) If a gross sum is also to be paid to the intended wife, insert—
“the payment of the said sum of 1,500*l.*”

No. X.

SETTLEMENT, BY WHICH AN ANNUITY OF £349, THE PROPERTY OF THE INTENDED WIFE, SECURED UPON A REVERSIONARY INTEREST IN TRUST MONEYS, IS SETTLED UPON SUCH TRUSTS AS SHE SHALL APPOINT; AND IN DEFAULT OF APPOINTMENT, UPON TRUST FOR HER SEPARATE USE, WITH USUAL POWERS OF ATTORNEY, AND OF CHANGING TRUSTEES.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of the deed creating the annuity. 3. Of intended marriage. 4. Testatum: intended wife assigns the annuity to the trustees of the settlement. 5. Habendum. 6. Upon trust for intended wife until the marriage. | <ol style="list-style-type: none"> 7. For such persons as she shall, notwithstanding her coverture, by deed or will appoint; and in default thereof, 8. Upon trust for the separate use of intended wife. 9. Covenant from intended husband that annuity shall be enjoyed according to the trusts of the settlement. 10. Power of attorney. 11. Power to change trustees. |
|---|--|

1. THIS INDENTURE, made the day of A.D. 18 , Parties.
BETWEEN (*intended wife*), of, &c., of the first part, (*intended husband*) of, &c., of the second part, and (*two trustees*) of, &c., of the third part.

2. WHEREAS by indenture dated the 16th day of March, in the year 1846, and made between (*grantor of annuity*), esquire, and (*Christian name*) his wife, of the first part, the said *intended wife*, of the second part, and (*A.*), of, &c., esquire, and (*B.*), of, &c.,

Recital of the deed creating the annuity.

No. X.
 Marriage
 Settlement, by
 which Property
 of intended
 Wife is settled
 upon such
 Trusts as she
 shall appoint,
 &c.

gentleman (trustees nominated on the part of the said (*intended wife*), and also of the said (*grantor of annuity*), of the third part, IT IS WITNESSED that, in consideration of the sum of 4,990*l.* then paid by the said (*intended wife*) to the said (*grantor of annuity*), the said (*grantor of annuity*) did give, grant and confirm unto the said (*intended wife*), one clear annuity of 349*l.* during the remainder of her life, payable by two equal half-yearly payments, on the 16th day of March and the 16th day of September in every year, with a proportionate part of the said annuity up to the actual time of her decease, in case of her death at any intermediate time between any of the said half-yearly days of payment. AND IT IS (by the now reciting indenture) FURTHER WITNESSED, that for the nominal pecuniary consideration therein expressed, the said (*grantor of annuity*) and (*Christian name*), his wife, (at the request and by the direction of the said (*intended wife*), testified as therein mentioned), did bargain, sell and assign unto the said (*A. and B.*), the sum of 4,500*l.*, which, by a certain indenture of release, dated the 18th day of January, 18 , (being a settlement made in contemplation of a marriage then intended, and which was shortly afterwards solemnized, between (*father of grantor's wife*) and (*Christian name*), his late wife), was directed to be raised after the decease of the said (*father*), but who is still living, out of certain freehold estates in such settlement comprised, and unto which said sum of 4,500*l.* the said (*Christian name*), the wife of the said (*grantor of annuity*), as the only issue of the said marriage, or the said (*grantor of annuity*), in her right was entitled, under a certain other indenture, bearing even date with the said indenture of release and settlement, purporting to declare the trusts of the said sum of 4,500*l.* and all interest to become due in respect thereof; TO HOLD the same unto the said (*A. and B.*), their executors, administrators and assigns, with powers of attorney to recover and receive the said sum of 4,500*l.*, and to stand possessed thereof, UPON TRUST, in case the said (*intended wife*) should be then living, to invest the same in the purchase of Three per cent. Consolidated Annuities, in the name of them the said (*A. and B.*), or the survivor of them, his executors or administrators, and to stand possessed thereof UPON TRUST, in case default should be made by the said (*grantor of annuity*), his executors or administrators, in payment of the clear annuity of 349*l.*, by the space of three calendar months next after

any half-yearly payment thereof should have become due, by sale of all or a competent part of the said stock, to purchase of some public office in London or Westminster, by which annuities for lives were granted, one like clear annuity of 349*l.*, for and in the name of the said (*intended wife*), in exchange for the said annuity of 349*l.* so thereby granted, and subject thereto, UPON TRUST to permit the said (*grantor of annuity*), and his assigns, to receive the dividends of the said Three per cent. Consolidated Annuities so long as the said annuity should be subsisting; AND after the decease of the said (*intended wife*), and payment of the said annuity up to the time of her decease, then as to the principal of the said stock, UPON TRUST for the said (*grantor of annuity*), his executors, administrators and assigns; AND with a proviso, that after a purchase should be made under the trusts aforesaid of a substituted annuity in lieu of the annuity thereby granted, that then the said annuity thereby granted should cease; AND with a covenant by the said (*grantor of annuity*), that in case the moneys received by the said (*A. and B.*) should prove incompetent to purchase an annuity to the amount of the annuity so thereby granted, that then the said (*grantor of annuity*) would make good the deficiency by an immediate payment unto the said (*A. and B.*), or the survivor of them, his executors or administrators, of so much sterling money, as, with the said trust moneys received by them under the now reciting indenture, would enable them or him to purchase a substituted annuity for the then remainder of the life of the said (*intended wife*), to the full amount thereby granted.

3. AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said (*intended husband*) and (*intended wife*), and upon the treaty for the said intended marriage it was agreed that the said annuity of 349*l.* should be settled and assured upon the trusts hereinafter declared.

No. X.
 Marriage
 Settlement, by
 which Property
 of intended
 Wife is settled
 upon such
 Trusts as she
 shall appoint,
 &c.

Of intended
 marriage.

4. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, and of the sum of 5*s.* paid by the said (*trustees*) to the said (*intended wife*), on the execution hereof, the receipt of which is hereby acknowledged, SHE the said (*intended wife*) DOTH by these presents assign and transfer unto

Testatum:
 intended wife
 assigns annuity
 to trustees of
 the settlement.

No. X.

*Marriage
Settlement, by
which Property
of intended
Wife is settled
upon such
Trusts as she
shall appoint,
&c.*

the said (*trustees*) ALL that the aforesaid annuity or clear yearly sum of 349*l.* so as aforesaid granted and made payable unto the said (*intended wife*) for and during the remainder of her natural life; AND all and every other sum and sums of money by way of annuity, due and payable under or by virtue of the said hereinbefore recited indenture; TOGETHER with all payments henceforth to grow due in respect of the same annuity; AND ALSO a proportionate part of the said annuity which shall or may accrue due between the time of the last half-yearly day of payment, up to and inclusive of the day of the death of the said (*intended wife*); AND all the estate, right, title and interest, both legal and equitable, of her the said (*intended wife*), therein.

Habendum.

5. TO HOLD, RECEIVE AND TAKE the said annuity or clear annual sum of 349*l.*, and all and singular other the said hereby assigned premises, unto the said (*trustees*), their executors, administrators and assigns, for and during the remainder of the natural life of the said (*intended wife*), upon the trusts hereinafter declared (that is to say),

Upon trust for
intended wife
until the
marriage.

6. UPON TRUST for the said (*intended wife*) and her assigns, until the solemnization of the said intended marriage, and from and immediately after the solemnization thereof,

For such persons
as she shall, not-
withstanding
her coverture,
by deed or will
appoint; and in
default thereof,

7. UPON TRUST for such person or persons, and for such ends, intents and purposes, and with, under and subject to such powers, provisoes, declarations and agreements as the said (*intended wife*) shall from time to time, or at any time during her natural life, and notwithstanding her coverture, by deed or will appoint; and in default of such appointment, and subject thereto,

Upon trust for
the separate use
of intended wife.

8. UPON TRUST that they the said (*trustees*), and the survivor of them, his executors or administrators, do and shall receive the said annuity as and when the same shall become payable, and pay the same unto the said (*intended wife*) during her natural life, for her sole and separate use, free from the debts, engagements, or control of the said (*intended husband*.)

Covenant from

9. AND the said (*intended husband*) doth hereby for himself, his

heirs, executors and administrators, covenant with the said (*trustees*), their executors, administrators and assigns, that (notwithstanding any act done or permitted by him or any person right-fully claiming under him to the contrary) the said annuity, and all and singular other the said hereby assigned premises, shall, from and immediately after the solemnization of the said intended marriage, be held and enjoyed upon the trusts, and for the ends, intents and purposes, and with, under and subject to the powers, provisoes, declarations and agreements hereinbefore limited and declared of and concerning the same.

No. X.
 Marriage
 Settlement, by
 which Property
 of intended
 Wife is settled
 upon such
 Trusts as she
 shall appoint,
 &c.
 intended
 husband that
 annuity shall
 be enjoyed
 according to the
 trusts of the
 settlement.

10. AND the said (*intended wife*) and (*intended husband*) do by these presents irrevocably appoint the said (*trustees*), and the survivor of them, his executors or administrators, to be their, her and his true and lawful attorneys and attorney, in their, her or his names or name, to ask, demand, sue for, recover and receive of and from the person or persons to whom it shall or may belong to pay the same, the said annuity of 349*l.*, and upon receipt thereof to give good and sufficient releases and discharges for the same; AND one or more attorneys or attorney for all or any the purposes aforesaid to substitute and appoint, and such substitution at pleasure to revoke, they the said (*intended husband*) and (*intended wife*) hereby ratifying and confirming, and promising and agreeing to ratify and confirm, all and whatsoever the said (*trustees*), or the survivor of them, his executors or administrators, or his or their attorneys or attorney, shall lawfully do or cause to be done in the premises, by virtue of these presents.

Power of
 attorney.

11. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that in case of the death, continued residence abroad, refusal, or incapacity of either of them the said (*trustees*), or of any trustee or trustees to be appointed in their stead, it shall be lawful for the said (*intended wife*), and whether she shall be covert or sole, either by deed, or by any writing under her hand, to appoint a new trustee or trustees in the stead of such trustee or trustees so dying, continuing to reside abroad, neglecting, refusing, or becoming incapable to act as aforesaid, and thereupon the said trust estate and premises shall be forthwith assigned in such manner as that the same may vest in such new trustee or trustees, either jointly with the sur-

Power to change
 trustees.

No. X. viving or continuing trustee or trustees, or solely, as the case may
Marriage require, upon the trusts hereinbefore declared; AND that every
Settlement, by such new trustee or trustees, either before or after such assign-
which Property ment, shall have the same powers as if he or they had been origi-
of intended nally appointed a trustee or trustees by these presents; and that
Wife is settled no trustee to be appointed as aforesaid shall be responsible for the
upon such acts, deeds, or defaults of any co-trustee or co-trustees, nor for
Trusts as she involuntary losses, nor for money received under receipts in which
shall appoint, they shall join only for conformity; AND that the present or any
&c. future trustee or trustees shall and may reimburse themselves and
each other out of any moneys which shall come to their respective
hands, by virtue of these presents, all such costs, charges and ex-
penses as shall be incurred by them in the execution of the afore-
said trusts, or in relation thereto.

IN WITNESS, &c.

No. XI.

SETTLEMENT, BY WHICH INTENDED WIFE (A WIDOW) SETTLES THE INCOME OF TRUST MONEYS TO WHICH SHE IS ENTITLED UNDER A FORMER MARRIAGE SETTLEMENT, AND APPOINTS THE PRINCIPAL BETWEEN HER THREE CHILDREN BY A FORMER HUSBAND. THE SUM OF £3,500 TO WHICH SHE IS ENTITLED UNDER HER DECEASED FATHER'S WILL, IS SETTLED FOR HER SEPARATE USE FOR LIFE, WITH AN ABSOLUTE POWER OF APPOINTMENT, AND IN DEFAULT THEREOF, UPON TRUST TO PAY INTEREST TO HUSBAND FOR LIFE IN CASE OF HIS SURVIVING HER, AND AFTER THE DECEASE OF SURVIVOR, ONE MOIETY TO BE UPON THE SAME TRUSTS AS THEREINBEFORE DECLARED IN FAVOUR OF THE ISSUE OF THE INTENDED MARRIAGE, AND THE OTHER MOIETY IN FAVOUR OF THE ISSUE OF THE FORMER MARRIAGE.

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| <ol style="list-style-type: none"> 1. Parties. 2. Recital of first marriage settlement settling the dividends of stock on wife for life, with power for husband and wife or the survivor to appoint amongst the issue of the marriage. 3. Recital of death, and of the will of former husband bequeathing certain property to his wife during widowhood. 4. That the issue of the marriage is one son and two daughters. 5. That wife is entitled to 3,500<i>l.</i> under her deceased father's will. | <ol style="list-style-type: none"> 6. Of agreement for intended marriage. 7. Testatum, by which it is declared that trustees of former settlement shall stand possessed of interest, &c. upon trust for the separate use of wife for life. 8. Wife appoints principal of trust moneys. 9. As to one moiety, upon trust for son to be paid at twenty-one. 10. As to other moiety in equal shares between the two daughters, payable at twenty-one or marriage. |
|--|--|

- | | |
|--|--|
| <p>11. In case of son's death under twenty-one or of daughters' under twenty-one or marriage, to remain over to survivors.</p> <p>12. Provision for maintenance.</p> <p>13. Powers of advancement.</p> <p>14. Further testatum; wife assigns 3,500<i>l.</i> to which she is entitled under her deceased father's will.</p> <p>15. Habendum to trustees, with power of attorney to receive and compel payment of the same.</p> <p>16. Declaration that trustees shall stand possessed of trust moneys.</p> <p>17. Upon trust to invest, with power of varying securities.</p> <p>18. Upon trust to pay interest, &c. to wife for her separate use.</p> <p>19. Upon such trusts as wife shall by deed or will appoint.</p> | <p>20. In default of appointment, husband to receive interest, &c. for life in case he shall survive wife.</p> <p>21. As to one equal moiety, upon trust for the children of intended marriage as tenants in common.</p> <p>22. In case of no children of intended marriage, then upon trust for children of former marriage.</p> <p>23. As to remaining moiety, one half-part to be upon trust for son of former marriage, and other part to be equally divided between the two daughters.</p> <p>24. Provisions for survivorship and accruer.</p> <p>25. In case of the death of all the children of the former marriage before the time of payment, upon trust for the children of intended marriage.</p> <p>26. Ultimate trust for next-of-kin of wife under the Statute of Distributions.</p> |
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Parties

1. THIS INDENTURE, made the day of A.D. 18 ,
 BETWEEN (*intended wife*) of, &c., (widow of *A. B.*, late of, &c.,
 gentleman, deceased), of the first part, (*intended husband*), of, &c.,
 of the second part (*trustees of first marriage settlement*), (*a*) of the
 third part, and (*trustees of present settlement*) of the fourth part.

Recital of first
 marriage settle-
 ment settling
 the dividends of
 stock on wife
 for life, with
 power for hus-
 band and wife,
 or the survivor,
 to appoint
 amongst the
 issue of the
 marriage.

2. WHEREAS by indenture dated the day of in the
 year 18 , and made between the said (*A. B.*), of the first part,
 the said (*intended wife*), of the second part, and (*trustees of reciting
 settlement*), of the third part (being the settlement made pre-
 viously to and in contemplation of a marriage then intended
 between the said (*intended wife*) and the said (*A. B.*), her late de-
 ceased husband, and which was shortly afterwards duly solemnized),

Practical
remarks.

(*a*) It is not absolutely necessary that the trustees of the former settlement should be parties to the present one; at the same time it will, generally speaking, be advisable to make them concur, and also to get them to execute the deed, as this will dispense with the necessity of giving them any notice of the trusts of the present settlement, which they ought otherwise to be supplied with.

the sum of 4,000*l.* Three per cent. Consolidated Annuities, which had been previously transferred into, and was then standing in the names of the said (*trustees of first settlement*), was settled and assured *upon trust* that the said trustees of reciting settlement should continue the said stock in its then state of investment, or invest the same in some other stocks or funds, or upon government securities, or by way of mortgage upon freehold, leasehold or copyhold premises, with powers for varying securities, and should pay the interest, dividends and annual produce thereof to the said (*A. B.*), during his life, and after his decease should pay the same interest, dividends and annual produce to the said (*intended wife*), in case she should survive him, and after her decease, *upon trust* for all and every the children of the said intended marriage, as the said (*A. B.*) and (*intended wife*), or the survivor of them, should by deed or will appoint; and in default thereof, *upon certain trusts* for the benefit of the issue of the said intended marriage, as in the now reciting indenture is expressed and declared.

No. XI.

Marriage Settlement, by which intended Wife (a widow) settles Interest of Trust Moneys under former Marriage Settlement, and appoints Principal between her Children by former Husband, &c.

3. AND WHEREAS the said (*A. B.*) died on the day of having by his last will and testament, dated the day of bequeathed certain portions of his property to his wife the said (*intended wife*), during her widowhood, and in case of her marriage, upon certain trusts in the now reciting will expressed and declared; and the said (*A. B.*) appointed his said wife and (*executor*) joint executrix and executor in trust of his said will, who duly proved the same in the Prerogative Court of the Archbishop of Canterbury, on the day of .

Recital of death, and of the will of former husband bequeathing certain property to his wife during widowhood.

4. AND WHEREAS there was issue of the said marriage, one son and two daughters (that is to say), (*son*), now aged years or thereabouts (*eldest daughter*), now aged years or thereabouts, and (*youngest daughter*), now aged years or thereabouts.

That the issue of the marriage is one son and two daughters.

5. AND WHEREAS the said (*intended wife*) is entitled to the sum of 3,500*l.* sterling, under the will of (*R. S.*), her late deceased father, and charged upon his real estate, together with interest for the same at the rate of 4*l.* for every 100*l.* by the year, until the same should be raised and paid.

*That wife is entitled to 3,500*l.* under her deceased father's will.*

No. XI.

Marriage
Settlement, by
which intended
Wife (a widow)
settles Interest
of Trust Moneys
under former
Marriage
Settlement, and
appoints Princi-
pal between her
Children by
former Husband,
&c.

Of agreement
for intended
marriage.

Testatum, by
which it is
declared that
trustees of
former settle-
ment shall stand
possessed of
interest, &c.
upon trust for
the separate use
of wife for life.

6. AND WHEREAS a marriage hath been agreed upon and is intended to be shortly had and solemnized between the said (*intended husband*) and (*intended wife*), and upon the treaty for the said intended marriage it was agreed that the said stocks, funds and securities, and the said sum of 3,000*l.* should be settled and assured upon the trusts and in manner hereinafter appearing.

7. NOW THIS INDENTURE WITNESSETH, that, in consideration of the said intended marriage, it is hereby declared and agreed by and between the parties to these presents, that the said (*trustees of first settlement*), and the survivor of them, his executors or administrators, or other the trustee or trustees for the time being of the said recited settlement, do and shall, immediately after the solemnization of the said intended marriage, pay the interest, dividends and annual produce of the said sum of 4,000*l.* Three per cent. Consolidated Annuities, or the stocks, funds, or securities in or upon which the same is invested, and so payable to the said (*intended wife*), in case of her surviving the said (*A. B.*), deceased, as aforesaid, unto the said (*intended wife*), for the remainder of her natural life, for her sole and separate use, free from the debts, engagements, liabilities, or control of the said (*intended husband*.)

Wife appoints
principal of
trust moneys.

8. AND THIS INDENTURE ALSO WITNESSETH, that she the said (*intended wife*), in pursuance and in exercise and execution of the power limited to her by the said recited indenture of settlement, and of every other power in her vested or in anywise enabling her thereunto, DOth by these presents absolutely and irrevocably direct, limit and appoint that the said sum of 4,000*l.* Three per cent. Consolidated Annuities, or the stocks, funds and securities in or upon which the same shall be invested, shall from henceforth be, and that the said (*trustees of first settlement*), and the survivor of them, his executors or administrators, or other the trustees or trustee of the said hereinbefore recited settlement, shall stand possessed thereof, as to one equal moiety or half part.

As to one moiety
upon trust for
son to be paid
at twenty-one.

9. UPON TRUST for the said (*son*), and to be paid and transferred to him on his attaining the age of twenty-one years.

10. AND as to the other equal moiety or half-part, *upon trust* for the said (*eldest daughter*) and (*youngest daughter*) equally to be divided between them, share and share alike, as tenants in common, and to be paid and transferred to them respectively on their attaining their respective ages of twenty-one years, or days of marriage, whichever may first happen.

No. XI.

Marriage Settlement, by which intended Wife (a widow) settles Interest of Trust Money under former Marriage Settlement, and appoints Principal between her Children by &c.

11. AND in case the said (*son*) shall die under the age of twenty-one years, or in case the said (*eldest daughter*) or (*youngest daughter*) shall die under the age of twenty-one years and unmarried, then, as well the original share, as also the surviving or accruing shares under this cross executory trust, shall be *upon trust* for the survivors or survivor of them the said (*son*), (*eldest daughter*), and (*youngest daughter*), equally to be divided between them as tenants in common; such accruing share or shares to be paid and transferred to them respectively at such ages, days and times as his, her or their original share or shares are hereinbefore directed to be paid and transferred.

As to other moiety in equal shares between the two daughters, payable at twenty-one or marriage. In case of son's death under twenty-one, or of daughters' under twenty-one, or marriage, to remain over to survivors. Provisions for maintenance.

12. AND IT IS HEREBY DECLARED, that if at the time of the decease of the said (*intended wife*), the said (*son*) shall be under the age of twenty-one years, or the said (*eldest daughter*) or (*youngest daughter*) shall be under that age or unmarried, then UPON FURTHER TRUST that the said (*trustees of first settlement*), and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of the said recited indenture of settlement, shall apply a competent part of the interest, dividends and annual produce of the presumptive share of them the said (*son*), and (*eldest daughter*), and (*youngest daughter*), in or towards their, his or her maintenance, education and support.

13. AND IT IS HEREBY FURTHER DECLARED, that it shall be lawful for the said (*trustees of first settlement*), and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of the said recited indenture of settlement, at their or his discretion, to advance any sum or sums of money, not exceeding in the whole one-half of the presumptive share or shares of the said (*son*), (*eldest daughter*), and (*youngest daughter*),

Powers of advancement.

No. XI.

Marriage Settlement, by which intended Wife (a widow) settles Interest of Trust Moneys under former Marriage Settlement, and appoints Principal between her Children by former Husband &c.

Further testament; wife assigns 3,500*l.* to which she is entitled under her deceased father's will.

during such time as the said (*son*) shall be under the age of twenty-one years, and as the said (*eldest daughter*) and (*youngest daughter*) shall be under that age and unmarried, for the purpose of placing him, her or them in or to any profession, trade, business or advancement in the world.

14. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, SHE the said (*intended wife*) DOTH by these presents assign and transfer unto the said (*trustees of present settlement*), ALL that the aforesaid principal sum of 3,500*l.*, to which the said (*intended wife*) is entitled under the said will of her said father the said (*R. S.*), deceased, and so charged upon his real estate as aforesaid, together with all interest henceforth to grow due in respect thereof; and all the estate, right, title and interest of her the said (*intended wife*) therein,

Habendum to trustees, with power of attorney to receive and compel payment of the same.

15. TO HAVE, HOLD, RECEIVE AND 'TAKE the' said sum of 3,500*l.* and interest, and all and singular other the premises hereby assigned, unto the said (*trustees of present settlement*), their executors, administrators and assigns, as and for their proper moneys and effects; AND with full power for them, or the survivor of them, his executors or administrators, as the true and lawful attorney and attorneys of her the said (*intended wife*), or of the said (*intended husband*) and (*intended wife*), and in his or her name, or in the names of them the said (*intended husband*) and (*intended wife*), to ask, demand, sue for, recover and receive of and from the person or persons to whom it shall or may belong to pay the same, the said sum of 3,500*l.*, and the interest that shall become or accrue due in respect thereof; and upon nonpayment thereof to use such lawful and equitable ways and means for enforcing payment of the same as may be deemed expedient in that behalf; and upon payment thereof to give good and sufficient releases and discharges for the same; and one or more attorney or attorneys for all, any or either of the purposes aforesaid to substitute and appoint, and such substitution and appointment at pleasure to revoke.

Declaration that trustees shall stand possessed of trust moneys.

16. AND IT IS HEREBY DECLARED AND AGREED by and between the said parties to these presents, that the said (*trustees of*

present settlement), and the survivor of them, his executors, or administrators, shall stand possessed of the said sum of 3,500*l.* so assigned to them as aforesaid, upon the following trusts (that is to say),

No. XI.

Marriage Settlement, by which intended Wife (a widow) settles Interest of TrustMoneys under former Marriage Settlement, and appoints Principal Children by former Husband, &c.

17. UPON TRUST for the said (*intended wife*) until the solemnization of the said intended marriage, and from and immediately after the solemnization thereof, UPON TRUST that the said (*trustees of present settlement*), and the survivor of them, his executors or administrators, do and shall lay out and invest the said sum of 3,500*l.*, as and when they or he shall receive the same, in some of the public stocks or funds, or upon government securities, or by way of mortgage upon freehold, leasehold or copyhold estates; which said stocks, funds and securities, it shall be lawful for the said (*trustees of present settlement*), or the survivor of them, his executors or administrators, by and with the consent of the said (*intended wife*), during her lifetime, and notwithstanding her coverture, and afterwards for the said (*trustees of present settlement*), and the survivor of them, his executors or administrators, to alter, vary and transpose as they or he may deem necessary or expedient; and do and shall stand and be possessed of the said trust moneys, stocks, funds and securities,

Upon trust to invest, with power of varying securities.

18. UPON TRUST to pay the interest, dividends and annual produce thereof, as and when the same shall become due and payable, unto the said (*intended wife*), for and during the term of her natural life, for her sole and separate use, free from the debts, engagements, liability or control of the said (*intended husband*), her receipts alone being a sufficient discharge for the same; AND after her decease, *then*, as to the last-mentioned stocks, funds and securities,

Upon trust to pay interest, &c. to wife for life for her separate use.

19. UPON TRUST for such person or persons, and for such ends, intents and purposes, and with, under and subject to such powers, provisoes, declarations and agreements as the said (*intended wife*) shall from time to time or at any time, and notwithstanding her coverture, by deed or will appoint; and in default of such appointment, and so far as any such appointment, if incomplete, shall not extend,

Upon such trust as wife shall by deed or will appoint.

No. XI.

Marriage Settlement, by which intended Wife (a widow) settles Interest of Trust Moneys under former Marriage Settlement, and appoints principal between her Children by former Husband, &c.

In default of appointment husband to receive interest, &c. for life in case he shall survive wife.

As to one equal moiety, upon trust for the children of intended marriage as tenants in common.

20. UPON TRUST to pay the interest, dividends and annual produce of the said last-mentioned trust moneys, stocks, funds and securities, or permit the same to be received by the said (*intended husband*), for the term of his natural life, in case he shall happen to survive the said (*intended wife*); and after the decease of the survivor of them the said (*intended husband*) and (*intended wife*),

21. As TO one equal moiety or half-part of the said last-mentioned trust moneys, stocks, funds and securities, UPON TRUST for all and every the child and children of the said (*intended wife*), by the said (*intended husband*), who being a son or sons shall attain the age of twenty-one years, or who being a daughter or daughters shall attain that age or be married, equally to be divided between them, if more than one, share and share alike, as tenants in common; and if there shall be but one child, UPON TRUST for such one child. [INSERT HERE *provisions for maintenance, and powers of advancement, ut ante*, No. IV., clauses 11, 12, p. 705.]

In case of no children of intended marriage, then upon trust for children of former marriage.

22. AND in case there shall be no child or children of the said (*intended wife*), by the said (*intended husband*), or being such, every one of them who, being a son or sons, shall die under the age of twenty-one years, or who being a daughter or daughters, shall die under that age and unmarried, *then* UPON TRUST for the said (*son*) and (*eldest daughter*) and (*youngest daughter*), equally to be divided between them, share and share alike, as tenants in common; and to be paid and transferred to them at such respective ages, days and times, and subject to the same benefit of survivorship and accruer, and to such and the like provisions for maintenance and powers of advancement, as are hereinbefore expressed and contained respecting the said first-mentioned stocks, funds and securities, or as near thereto as the death of parties and other circumstances will then permit.

As to remaining moiety, one half-part to be upon trust for son of

23. AND as to the other equal moiety or half-part of the said last-mentioned stocks, funds and securities, as to one equal half-

part of the same, the whole into two equal parts to be considered so divided, UPON TRUST for the said (*son*), and to be paid and transferred to him on his attaining the age of twenty-one years; and as to the other equal half-part, UPON TRUST for the said (*eldest daughter*) and (*youngest daughter*), equally to be divided between them, share and share alike, as tenants in common, to be paid and transferred to them respectively on their attaining their respective ages of twenty-one years, or days of marriage, which ever may first happen.

No. XI.
Marriage Settlement, by which intended Wife (a widow) settles Interest of Trust Moneys under former Marriage Settlement, and appoints Principal between her Children by former Husband, &c.

24. AND IT IS HEREBY DECLARED that the said moiety or equal half-part of the said last-mentioned trust moneys, stocks, funds and securities so limited upon trust for the said (*son*), and (*eldest daughter*), and (*youngest daughter*), shall be subject to such and the same benefit of survivorship and accruer, and to such and the like provisions for maintenance and powers of advancement, as are hereinbefore expressed or contained respecting the said first-mentioned stocks, funds and securities, or as near thereto as the death of parties and other circumstances will then permit.

former marriage, and other part to be equally divided between the two daughters. Provisions for survivorship and accruer.

25. AND in case of the death of the said (*son*), under the age of twenty-one years, and of the death of the said (*eldest daughter*) and (*youngest daughter*), under that age and unmarried, then upon such and the same trusts for the benefit of all and every the child and children of the said (*intended wife*), by the said (*intended husband*), and with such and the same provisions for maintenance and powers of advancement as are hereinbefore declared of and concerning the other moiety or equal half-part of the last-mentioned trust moneys, stocks, funds and securities, or such of them as shall be then subsisting or capable of taking effect.

In case of the death of all the children of the former marriage before the time of payment, upon trust for children of intended marriage.

26. AND in case the said (*son*) shall so die under the age of twenty-one years as aforesaid, and the said (*eldest daughter*) and (*youngest daughter*) shall so die under that age and unmarried, and at that time there shall be no child or children of the said (*intended wife*), by the said (*intended husband*), or being such, every one of them who being a son or sons shall die under the age of twenty-

Ultimate trust for the next-of kin of wife under the Statute of Distribution

No. XI. one years, or being a daughter or daughters shall die under that age and unmarried, *then* UPON TRUST for the person or persons who at the time of the decease of the said (*intended wife*) would be entitled to her personal estate under the Statute of Distributions. [INSERT *power to change trustees, ut ante*, No. IV., clause 16, p. 706.]

Marriage
Settlement, by
which intended
Wife (a widow)
settles Interest
of Trust Moneys
under former
Marriage
Settlement, and
appoints Principal
between her
Children by
former Husband,
&c.

IN WITNESS, &c.

No. XII.

SETTLEMENT, BY WHICH £1,000, SECURED BY THE BOND OF INTENDED WIFE'S FATHER, IS SETTLED UPON TRUST FOR INTENDED HUSBAND AND WIFE, AND THE ISSUE OF THE INTENDED MARRIAGE.

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| <p>1. Parties.</p> <p>2. Recital of intended marriage, and of a bond given by intended wife's father for securing the payment of 1,000<i>l.</i> payable by four yearly instalments.</p> | <p>3. Testatum whereby it is declared that trustees shall stand possessed of trust moneys upon the trusts of the settlement.</p> |
|---|--|

1. THIS INDENTURE, made the day of A.D. 18 , Parties.
BETWEEN (*intended husband*), of, &c., of the first part, (*intended wife*), of, &c., of the second part, (*intended wife's father*), of, &c., of the third part, and (*two trustees*) of the fourth part.

2. WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said (*intended husband*) and (*intended wife*), and for making some provision for the said (*intended husband*) and (*intended wife*), and the issue of the said intended marriage, the said (*intended wife's father*) hath by his bond, bearing even date herewith, become bound to the said trustees in the penal sum of 2,000*l.*, conditioned to be void upon payment by the said (*intended wife's father*) in his lifetime, unto the said (*trustees*), their executors, administrators, or assigns, of the sum of 1,000*l.* sterling, by four equal yearly instalments of 250*l.* each, with interest for the same at the rate of 5*l.* for every 100*l.* by the year; the first of the said instalments to be made at the

Recital of intended marriage, and of a bond given by intended wife's father for securing the payment of 1,000*l.* payable by four yearly instalments.

No. XII.

*Marriage
Settlement, by
which £1,000
secured by
bond of intended
Wife's father,
is settled upon
Trusts, &c.*

end of one year after the solemnization of the said intended marriage, and so from year to year until the whole of the said instalments shall be fully paid off and discharged; or if the said intended wife's father shall happen to die within the space of four years from such solemnization, then, if the heirs, executors or administrators of the said (*intended wife's father*) shall, within the space of six calendar months next after his decease, pay unto the said (*trustees*), their executors, administrators or assigns, the said principal sum of 1,000*l.*, or so much thereof as shall not have been paid by the said (*intended wife's father*) in his lifetime, together with interest for the same at the rate aforesaid, up to the time of the payment thereof.

Testatum,
whereby
it is declared
that trustees
shall stand
possessed of
trust moneys
upon the trusts
of the
settlement.

3. NOW THIS INDENTURE WITNESSETH, that, in consideration of the said intended marriage, it is hereby declared and agreed by and between the said parties to these presents, that the said (*trustees*) and the survivor of them, his executors or administrators, shall, after the solemnization of the said intended marriage, stand possessed of the said sum of 1,000*l.*, so secured to them by the said hereinbefore recited bond of the said (*intended wife's father*) as aforesaid, and all interest to accrue due thereon, UPON THE TRUSTS, and for the ends, intents and purposes hereinafter declared, &c.

IN WITNESS, &c.

No. XIII.

MARRIAGE SETTLEMENT, BY WHICH £2,000, WHICH THE INTENDED WIFE TAKES UNDER A POWER OF APPOINTMENT PAYABLE TO HER ON HER MOTHER'S DECEASE, IS SETTLED TO HER SEPARATE USE FOR LIFE, WITH AN ABSOLUTE POWER FOR HER TO APPOINT THE PRINCIPAL AFTER HER DECEASE, AND IN DEFAULT OF APPOINTMENT, UPON TRUST FOR THE ISSUE OF THE MARRIAGE IN EQUAL SHARES. THE INTENDED WIFE'S MOTHER ALSO GRANTS AN ANNUITY OF £100 A YEAR DURING HER LIFE, TO BE HELD UPON THE SAME TRUSTS.

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| <ol style="list-style-type: none"> 1. Parties. 2. Recital of intended marriage. 3. Recital of appointment of 2,000<i>l.</i> to intended wife. 4. Of agreement to settle the 2,000<i>l.</i>, and that wife's mother should pay 100<i>l.</i> a year during her life. 5. Testatum; wife assigns to trustees. 6. Habendum. 7. Declaration that trustees shall stand possessed of trust moneys, with power to vary securities. | <ol style="list-style-type: none"> 8. To pay dividends, &c. to wife for life, for her separate use. 9. After wife's decease, upon such trusts as she shall appoint. 10. In case of no issue of marriage, upon trust for such persons as would be entitled under the Statute of Distributions. 11. Further testatum, wife's mother grants an annuity of 100<i>l.</i> during her life. 12. Habendum. 13. In case of wife's death, annuity to be upon trust for the issue of the marriage. |
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1. THIS INDENTURE, made the day of A.D. 18 , Parties.
 BETWEEN (*intended wife*), of, &c., of the first part, (*wife's mother*),
 of, &c., widow of, &c., of the second part, (*intended husband*), of,
 &c., of the third part, and (*two trustees*), of the fourth part.

2. WHEREAS a marriage is intended to be shortly had and solemnized between the said (*intended husband*) and (*intended wife*).
Recital of intended marriage.

No. XIII.

*Marriage
Settlement, by
which £2,000,
is settled to
Wife's use,
payable on her
Mother's
decease, with
power to
appoint, &c.*

*Recital of
appointment
of 2,000*l.* to
intended wife.*

3. AND WHEREAS by deed poll dated the day next before the day of the date hereof, under the hand and seal of the said (*mother*), AFTER RECITING that (*J. S.*), Esquire, had by his will bequeathed the sum of 10,000*l.* to trustees therein named, upon trust to invest the same, with usual powers of varying securities, and to stand possessed thereof, UPON TRUST to pay the interest, dividends, and annual produce thereof to the said (*mother*) for her separate use for life, and after her decease, upon trust for all and every her child and children, in such parts, shares and proportions as she should by deed, with or without power of revocation or new appointment, to be by her sealed and delivered, in the presence of and attested by two or more credible witnesses, or by her last will or any codicil or codicils, direct, limit, or appoint, and in default thereof, upon certain trusts for the benefit of her said children, as in the said therein recited will is mentioned, AND ALSO RECITING that the said intended marriage was intended to be shortly solemnized between the said (*intended husband*) and (*intended wife*), and that the said (*mother*) was desirous of appointing the sum of 2,000*l.*, part of the said sum of 10,000*l.*, in manner hereinafter appearing, SHE the said (*mother*), in exercise of the power limited to her by the said thereinbefore recited will, did by the now reciting deed, sealed and delivered by her in the presence of and attested by the two credible witnesses whose names were intended to be thereupon indorsed (and which were afterwards duly indorsed thereupon accordingly), absolutely and irrevocably appoint, that the sum of 2,000*l.* sterling, part of the said capital sum of 10,000*l.*, or of the stocks, funds and securities whereupon the same should be invested, should, from and immediately after her decease, remain and be UPON TRUST for the said (*intended wife*), her executors, administrators and assigns, and to be paid over and transferred to her and them accordingly.

*Of agreement
to settle the
2,000*l.*, and
that wife's
mother should
pay 100*l.* per
annum during
her life.*

4. AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said sum of 2,000*l.* should be settled and assured upon the trusts hereinafter declared, and also that the said (*mother*) should during the remainder of her life assure the sum of 100*l.* a year to be payable out of her interest in the said sum of 10,000*l.*, in manner hereinafter appearing.

5. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, SHE the said (*intended wife*) DOTH by these presents assign and transfer, and the said (*mother*) DOTH by these presents ratify and confirm, unto the said (*trustees*) ALL that the aforesaid sum of 2,000*l.* sterling, so appointed to her the said (*intended wife*), and to be paid and transferred to her as aforesaid upon the decease of the said (*mother*); AND ALL the estate, right, title, and interest of her the said (*intended wife*) therein.

No. XIII.

Marriage Settlement, by which £2,000 is settled to Wife's Use payable on her Mother's decease, with power to appoint, &c.

Testatum :
wife assigns
to trustees.

6. TO HAVE, HOLD, RECEIVE AND TAKE the said principal sum of 2,000*l.* so payable and expectant on the decease of the said (*mother*) as aforesaid, unto the said (*trustees*), their executors, administrators and assigns, with full power for them the said (*trustees*), or the survivor of them, his executors or administrators, as the true and lawful attorney and attorneys of her the said (*intended wife*), or of the said (*intended husband*) and (*intended wife*), their executors or administrators, and in her name, or in the names of the said (*intended husband*) and (*intended wife*), their executors or administrators, to receive and enforce payment of the said sum of 2,000*l.*, and upon receipt thereof to give good and sufficient discharges for the same.

Habendum.

7. AND IT IS HEREBY DECLARED AND AGREED by and between the said parties hereto, that the said (*trustees*), and the survivor of them, his executors or administrators, do and shall stand and be possessed of the said sum of 2,000*l.* when and as the same shall be received, UPON TRUST to invest the same in some of the public stocks or funds, or upon government securities, or by way of mortgage upon freehold, leasehold, or copyhold premises; which said stocks, funds and securities it shall be lawful for the said (*trustees*) and the survivor of them, his executors or administrators, or other the trustee or trustees for the time being of these presents, with the consent of the said (*intended husband*) and (*intended wife*) during their joint lives, and after the decease of either of them, with the consent of the survivor, and after the decease of such survivor, at the discretion of the said (*trustees*) or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, to alter, vary, and transpose, as shall

Declaration that trustees shall stand possessed of trust moneys, with power to vary securities.

No. XIII.

*Marriage
Settlement, by
which £2,000
is settled to
Wife's use,
payable on her
Mother's
decease, with
power to
appoint, &c.*

To pay dividends, &c., to wife for life for her separate use.

After wife's decease, upon such trusts as she shall appoint.

be deemed necessary or expedient, and do and shall stand possessed of the said trust moneys, stocks, funds and securities,

8. UPON TRUST to pay the interest, dividends, and annual produce thereof, when and as the same shall become payable, into the proper hands of the said (*intended wife*), free from the debts, control, engagements or liabilities of the said (*intended husband*), her receipt alone being a sufficient discharge for the same; and after her decease,

9. UPON TRUST for such person or persons as the said (*intended wife*) shall from time to time or at any time, notwithstanding her coverture, by deed or will appoint, and in default of such appointment [INSERT HERE *trusts in favour of children of the marriage, with provisions for maintenance and powers of advancement, ut ante*, No. IV., clauses 9, 10, and 11, pp. 704, 705.]

In case of no issue of intended marriage, upon trust for persons entitled under Statute of Distributions.

10. AND in case there shall be no child or children of the said intended marriage, THEN UPON TRUST for such person or persons as would be entitled to the personal estate of the said (*intended wife*) under the Statute of Distributions.

Further testament, wife's mother grants an annuity of 100*l.* during her life.

11. AND THIS INDENTURE ALSO WITNESSETH, that for the considerations aforesaid, and also in consideration of the natural love and affection which the said (*mother*) now hath and beareth towards her daughter the said (*intended wife*), SHE the said (*mother*) DOTH by these presents grant and assign unto the said (*trustees*) one clear annuity or annual sum of 100*l.* to be issuing and payable out of the interest, dividends and annual produce of the said capital sum of 10,000*l.*, or of the stocks, funds and securities wherein the same is invested, during the remainder of the natural life of the said (*mother*); with full power and authority for the said (*trustees*), and the survivor of them, his executors or administrators, as the attorney and attorneys irrevocable of her the said (*mother*), her executors or administrators, and in her or their name or names, to ask, demand, recover and receive of and from the trustees or trustee for the time being of the said hereinbefore recited will, the said annual sum of 100*l.*, and to

give good receipts for all or any part of the said trust moneys and premises.

No. XIII.

*Marriage
Settlement, by
which £2,000
is settled to
Wife's use,
payable on her
Mother's
decease, with
power to
appoint, &c.*

Habendum.

12. TO HAVE, HOLD, RECEIVE, AND TAKE the said annuity, or yearly sum of 100*l.*, unto the said (*trustees*), their executors, administrators and assigns, during the remainder of the life of the said (*mother*), upon the trusts hereinafter declared, (that is to say), [HERE INSERT *trust to pay annuity to wife for her separate use, with general power of appointment, ut ante*, No. X., clause 8, p. 736.]

13. AND in default of such appointment, UPON TRUST for all and every the child and children of the said (*intended wife*) by the said (*intended husband*) who being a son or sons shall attain the age of twenty-one years, or who being a daughter or daughters shall attain that age or marry, in such parts, shares and proportions, and with such limitations over, as are hereinbefore expressed and declared of and concerning the said sum of 2,000*l.*, or as near thereto as the death of parties and other circumstances will then permit. [ADD *power to change trustees, ut ante*, No. I., clause 45, p. 684.]

*In case of wife's
death, annuity
to be upon trust
for the issue of
the marriage.*

IN WITNESS, &c.

SECTION III.

POST-NUPTIAL AND VOLUNTARY SETTLEMENTS.

No. I.—VOLUNTARY SETTLEMENT OF LEASEHOLD PROPERTY DETERMINABLE ON THREE LIVES, WITH RIGHT OF RENEWAL, UPON TRUST FOR SETTLOR FOR LIFE; WITH REMAINDER AS TO ONE MOIETY, UPON TRUST FOR WIFE OF SETTLOR FOR LIFE, AND AFTER HER DECEASE TO BE DIVIDED EQUALLY BETWEEN THE SETTLOR'S THREE CHILDREN; WITH PROVISIONS FOR SURVIVORSHIP AND ACCRUE, AND ALSO FOR MAINTENANCE AND EDUCATION DURING MINORITY; THE OTHER MOIETY TO BE UPON SIMILAR TRUSTS IN FAVOUR OF THE CHILDREN; WITH POWER TO RENEW LEASES, &c. VARIATION WHERE THE SHARE OF A DAUGHTER IS LIMITED TO HER SEPARATE USES.

No. II.—POST-NUPTIAL SETTLEMENT, BY WHICH FREEHOLD ESTATES THAT HAVE BEEN DEVISED TO THE WIFE ARE SETTLED TO SUCH USES AS SHE SHALL BY DEED OR WILL APPOINT, AND SUBJECT THERETO, UPON TRUST FOR HER SEPARATE USE FOR LIFE, WITH REMAINDER TO THE HUSBAND FOR LIFE, WITH ULTIMATE REMAINDER TO THE WIFE'S RIGHT HEIRS. VARIATION WHERE THE WIFE TAKES BY DESCENT.

No. III.—VOLUNTARY SETTLEMENT, BY WHICH FREEHOLD AND LEASEHOLD ESTATES, AND A POLICY OF ASSURANCE ON ONE OF THE LIVES UPON WHICH A PORTION OF THE LEASEHOLD PROPERTY IS DETERMINABLE, IS CONVEYED TO TRUSTEES IN TRUST TO PERMIT SETTLOR TO RECEIVE THE RENTS AND PROFITS FOR LIFE, AND THEN UPON TRUST FOR THE SEPARATE USE OF THE WIFE FOR LIFE, IN CASE OF HER SURVIVING HIM, WITH THE ULTIMATE LIMITATION TO THEIR ONLY SON ABSOLUTELY. THE PROCEEDS OF THE POLICY OF ASSURANCE ARE DIRECTED TO BE INVESTED, AND THE SECURITIES TO BE HELD UPON THE SAME TRUSTS AS THE LEASEHOLD PROPERTY. THE MONEYS ARISING FROM A POLICY OF ASSURANCE FOR 1,000*l.* ON THE SETTLOR'S LIFE, ARE DIRECTED TO BE INVESTED BY TRUSTEES, AND THE DIVIDENDS AND INTEREST ARISING THEREFROM, AND ALSO FROM 5,750*l.* THREE PER CENT. CONSOLS, TO BE PAID TO WIFE FOR LIFE, UPON TRUSTS FOR HER SEPARATE USE; WITH ULTIMATE TRUST FOR SETTLOR'S THREE DAUGHTERS AS TENANTS IN COMMON.

No. IV.—CONVEYANCE BY A WIDOW WHO TAKES A LIFE INTEREST IN FREEHOLD AND LEASEHOLD PROPERTY UNDER A VOLUNTARY SETTLEMENT, AND ALSO IN A POLICY OF ASSURANCE ON A PORTION OF THE LEASEHOLD PROPERTY, OF ALL HER ESTATE AND INTEREST TO HER SON, THE

LATTER OF WHOM IS ENTITLED IN REVERSION TO THE SAME PROPERTY EXPECTANT ON HER DECEASE, SUBJECT TO AN EXISTING MORTGAGE WHICH HAS BEEN CREATED BY THE WIDOW AND SON ON THE SAME PREMISES, HE COVENANTING TO INDEMNIFY HER AGAINST THE MORTGAGE DEBT.

No. V.—VOLUNTARY SETTLEMENT, BY WHICH SETTLOR CONVEYS FREEHOLD AND LEASEHOLD ESTATES, AND ALSO HOUSEHOLD FURNITURE, UPON TRUST FOR SETTLOR FOR LIFE, AND THEN TO SELL AND INVEST THE PROCEEDS, WITH POWER TO VARY SECURITIES, AND TO STAND POSSESSED OF TRUST MONEYS, UPON TRUST AS TO ONE MOIETY FOR WIFE FOR LIFE, FOR HER SEPARATE USE, WITH POWER OF APPOINTMENT, AFTER HER DECEASE, AMONGST HER CHILDREN BY THE SETTLOR; AND IN DEFAULT OF APPOINTMENT, AMONGST ALL THE CHILDREN EQUALLY; SONS AT TWENTY-ONE, AND DAUGHTERS AT TWENTY-ONE OR MARRIAGE. IF NO CHILD ACQUIRES A VESTED INTEREST, THEN UPON SIMILAR TRUSTS IN FAVOUR OF A SON OF SETTLOR BY A FORMER MARRIAGE, WITH A PROVISO FOR DETERMINING HIS ESTATE IN CASE OF HIS BANKRUPTCY OR INSOLVENCY.

No. VI.—VOLUNTARY SETTLEMENT, BY WHICH REAL AND PERSONAL ESTATE IS CONVEYED TO TRUSTEES TO SUCH USES AS SETTLOR SHALL BY DEED OR WILL APPOINT; AND IN DEFAULT THEREOF, UPON TRUST FOR SETTLOR FOR LIFE, EXCEPTING A LEASEHOLD MESSUAGE AND FURNITURE WHICH IS TO BE HELD UPON TRUST FOR D. S., THE PRESENT OCCUPANT, DURING THE SETTLOR'S LIFETIME, AND AFTER HIS DECEASE UPON TRUSTS FOR SALE, AND TO APPLY THE PROCEEDS, FIRST IN DISCHARGE OF SETTLOR'S DEBTS AND FUNERAL EXPENSES AND CERTAIN SPECIFIED SUMS OF MONEY, AND THEN TO INVEST A SUFFICIENT SUM OF THE TRUST MONEYS AS WILL PRODUCE AN ANNUAL SUM OF 150*l.* WHICH IS TO BE PAID TO D. S. BY MONTHLY INSTALMENTS FOR HER LIFE FOR HER SEPARATE USE, AND THE PRINCIPAL, TOGETHER WITH THE SURPLUS OF THE TRUST MONEYS IS SETTLED UPON TRUST FOR SEVERAL NATURAL CHILDREN OF THE SETTLOR BY D. S., IN EQUAL SHARES AS TENANTS IN COMMON: SHARES OF SONS TO BE TRANSFERRED AT TWENTY-ONE, AND DAUGHTERS AT TWENTY-ONE OR MARRIAGE, WITH PROVISIONS FOR SURVIVORSHIP AND ACCRUER, WITH ULTIMATE TRUST FOR SETTLOR'S NEXT-OF-KIN.

No. I.

VOLUNTARY SETTLEMENT OF LEASEHOLD PROPERTY DETERMINABLE ON THREE LIVES, WITH RIGHT OF RENEWAL, UPON TRUST FOR SETTLOR FOR LIFE; WITH REMAINDER AS TO ONE MOIETY, UPON TRUST FOR WIFE OF SETTLOR FOR LIFE, AND AFTER HER DECEASE TO BE DIVIDED EQUALLY BETWEEN THE SETTLOR'S THREE CHILDREN; WITH PROVISIONS FOR SURVIVORSHIP AND ACCRUE, AND ALSO FOR MAINTENANCE AND EDUCATION DURING MINORITY; THE OTHER MOIETY TO BE UPON SIMILAR TRUSTS IN FAVOUR OF THE CHILDREN; WITH POWER TO RENEW LEASES, &c. VARIATION WHERE THE SHARE OF A DAUGHTER IS LIMITED TO HER SEPARATE USE.

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| <ol style="list-style-type: none"> 1. Parties. 2. Recital that settlor is desirous of settling the property. 3. Testatum. 4. Habendum. 5. Upon trust for settlor for life. 6. Trust as to one moiety for settlor's wife for life. 7. For settlor's three children as tenants in common, with benefit of survivorship. | <ol style="list-style-type: none"> 8. As to the other undivided moiety, upon the same trusts for the benefit of settlor's children as before declared. 9. Provisions for maintenance. 10. Powers for trustees to effect renewals. <p style="text-align: center;">—</p> <p style="text-align: center;"><i>Additional Clause.</i></p> <p>A. Share of daughter to be to her separate use.</p> |
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Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (settlor) of, &c., of the one part, and (two trustees),

of, &c., of the other part. [INSERT *recital of lease, ut ante*, Part II., Section II., No. I., clause 2, p. 243; AND ALSO *the recital that lease contains a covenant for renewal, ut ib.*, note A.]

2. AND WHEREAS the said (*settlor*) is desirous of settling the said leasehold messuages and premises upon trust, for the benefit of himself, and his wife and children, in manner hereinafter appearing.

3. NOW THIS INDENTURE WITNESSETH, that in order to carry such his desire into effect, and in consideration of the natural love and affection which the said (*settlor*) hath and beareth towards his said wife and his children hereinafter mentioned, and also in consideration of the sum of 5*s.* sterling paid by the said (*trustees*) to the said (*settlor*) on the execution thereof, the receipt of which is hereby acknowledged, HE the said (*settlor*) DOTH by these presents assign unto the said (*trustees*) ALL those the aforesaid messuages or dwelling-houses, and all and singular other the premises comprised in and demised by the said hereinbefore recited indenture of lease, together with the same indenture of lease, and all other deeds and writings relating to the title of the said premises in the custody of the said (*settlor*), or which he can procure without suit. AND all the estate, right, title, interest, term and terms for years, or life or lives, tenant-right and right of renewal, benefit, claim and demand whatsoever, both legal and equitable, of him the said (*settlor*), of, in, to, out of or upon the said messuages or dwelling-houses and premises.

4. TO HAVE AND TO HOLD the said messuages or dwelling-houses, and all and singular other the premises hereinbefore described and hereby assigned, with their appurtenances, unto the said (*trustees*), their executors, administrators and assigns, from henceforth for all the residue of the said term of ninety-nine years, determinable and renewable as aforesaid, UPON THE TRUSTS, and for the ends, intents and purposes hereinafter expressed and declared (that is to say),

5. UPON TRUST that they the said (*trustees*), and the survivor of them, his executors or administrators, do and shall permit and

No. I.

Voluntary
Settlement of
Leasehold
Property for
Years,
determinable on
Three Lives,
&c.

Recital that
settlor is
desirous of
settling the
property.

Testatum.

Habendum.

Upon trust for
settlor for life,
with remainder,

No. 1.

Voluntary
Settlement of
Leasehold
Property for
Years,
determinable on
Three Lives,
&c.

suffer the said (*settlor*) and his assigns to hold and enjoy, or to receive the rents, issues and profits of the said messuages or dwelling-houses and premises, for and during the term of his natural life; and after his decease, *then*, as to one equal undivided moiety of the said messuages or dwelling-houses and premises,

Upon trust as to
one undivided
moiety for
settlor's wife
for life.

6. UPON TRUST to pay the rents and profits thereof unto, or to permit the same to be received and taken by, the said (*Eliza Jane*), the wife of the said (*settlor*) and her assigns, for and during the term of her natural life; and, after her decease,

Upon trust for
settlor's three
children as
tenants in
common, with
benefit of
survivorship
and accruer.

7. UPON TRUST for my two sons (*J. K.*), (*R. K.*), and my daughter (*S. K.*), and their respective executors, administrators and assigns, equally to be divided amongst them, as tenants in common, such shares to be respectively assigned and transferred to them when and as they shall severally attain their respective ages of twenty-one years; and in case either of them the said (*J. K.*), (*R. K.*), or (*S. K.*), shall die before they shall respectively attain the said age of twenty-one years, THEN, as well the original share or shares of him, her or them so dying, as also the share or shares thereof which may accrue under this cross-executory trust, shall from thenceforth be, UPON TRUST, for the survivor or survivor of them, their, his or her respective executors, administrators or assigns, equally to be divided amongst them, as tenants in common, and transferable to them at such ages, days and times as aforesaid. (*a*)

As to the other
undivided
moiety, upon the

8. AND as to the other equal undivided moiety of and in the

(*a*) If the daughter's share is to be limited to her separate use, insert as follows:

Share of
daughter to
be for her
separate use.

A. "but so, nevertheless, that the share of the said (*S. K.*), whether original or accruing as hereinafter mentioned, shall be for her sole and separate use, free from the debts, control, or engagements of any husband or husbands with whom she may at any time or time intermarry."

said messuages, or dwelling-houses and premises, UPON TRUST, for the said (*J. K.*), (*R. K.*), and (*S. K.*), and their respective executors, administrators and assigns, equally, as tenants in common; such shares to be with such and same benefit of survivorship and accruer (*b*) as hereinbefore mentioned, and to be transferred at such ages, days and times as are hereinbefore expressed of and concerning the said first-mentioned moiety of the said trust estate and premises.

No. I.
Voluntary
Settlement of
Leasehold
Property for
Years,
determinable on
Three Lives,
&c.

same trusts for
benefit of
settlor's children
as before
declared.

Provisions for
maintenance.

9. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that in case at the time of the decease of the said (*settlor*), all, any, or either of his said children shall be under the age of twenty-one years, THEN, that the said (*trustees*) and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, do and shall apply a competent portion of the rents, issues and profits arising out of the presumptive shares or share of such children or child in the said trust estate and premises in or towards his or their maintenance and support; and shall invest the surplus (if any) in some of the public stocks or funds, or upon government securities, or by way of mortgage, upon the security of freehold, copyhold, or leasehold estates of ample value, which said security, or any other security or securities in or upon which the same shall or may be invested, it shall be lawful for the trustees or trustee for the time being of these presents to alter, vary, and transpose, at their or his discretion; and shall stand possessed of the said last-mentioned trust moneys and premises, upon the same trusts as are hereinbefore declared of and concerning the respective shares out of which the same shall or may have arisen.

10. PROVIDED ALSO, AND IT IS HEREBY FURTHER DECLARED, that the said (*trustees*) and the survivor of them, his executors or administrators, do and shall, as and when any or either of the

Trustees to
effect renewals.

(*b*) If the daughter's share is to be limited to her separate use, insert herein :

“and as to the share of the said (*S. K.*), for her sole and separate use as hereinbefore mentioned.”

No. I.
*Voluntary
Settlement of
Leasehold
Property for
Years,
determinable on
Three Lives,
&c.*

lives whereon the said term is determinable shall happen to die, use their or his utmost endeavour to obtain a renewed lease of the said messuages and premises, and to insert fresh lives thereon, so and in such manner as that the full number of three lives may be constantly kept upon the said premises; and also do and shall, out of the rents and profits of the same, or by sale or mortgage thereof, if found expedient, levy and raise such sum or sums of money as he or they may think proper, for the purpose of discharging any fine or fines, or other costs, charges or expenses, attending such renewal and renewals, when and so often as such renewal or renewals shall be deemed necessary or expedient. [INSERT *power to change trustees, ut ante*, Section II., No. I., clause 45, p. 684.]

IN WITNESS, &c.

No. II.

POST-NUPTIAL SETTLEMENT, BY WHICH FREEHOLD ESTATES THAT HAVE BEEN DEVISED TO THE WIFE ARE SETTLED TO SUCH USES AS SHE SHALL BY DEED OR WILL APPOINT; (a) AND SUBJECT THERETO, UPON TRUST FOR HER SEPARATE USE FOR LIFE, WITH REMAINDER TO THE HUSBAND FOR LIFE, WITH ULTIMATE REMAINDER TO THE WIFE'S RIGHT HEIRS. VARIATION WHERE THE WIFE TAKES BY DESCENT.

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| <ol style="list-style-type: none"> 1. Parties. 2. Recital of will devising property to wife in fee. 3. Of marriage of husband and wife. 4. Of desire of husband and wife to settle the premises. 5. Testatum. 6. Habendum. 7. Power of appointment; and in default thereof, | <ol style="list-style-type: none"> 8. To the separate use of wife for life. 9. To the use of husband for life. 10. Ultimate limitation to the right heirs of the wife. <hr style="width: 10%; margin: 10px auto;"/> <p style="text-align: center;"><i>Substituted Clause.</i></p> <p>A. Recital of descent of property upon wife.</p> |
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1. THIS INDENTURE, made the day of A.D. 185 , Parties.
BETWEEN (*husband*), of, &c., and (*Christian name*) his wife, of the
one part, and (*two trustees*), of, &c., of the other part.

(a) The above settlement will confer an absolute power of disposition upon the wife, who previously had no power whatever over it, and at the same time it deprives the husband of all control during her lifetime, but it gives him a life estate in default of her appointment in case he should happen to survive her. In the case above supposed, indeed, as there was no issue ever born alive of the marriage, the husband would have had no claim as tenant by the curtesy, and consequently in the absence of the above limitation, or an appointment in his favour made by the wife, whatever interest he had in the property would have determined upon her death. Practical observations.

No. II.

*Post-Nuptial
Settlement, by
which Freehold
Estates devised
to Wife are
settled to such
Uses as she
shall appoint.*

*Recital of will
devising
property to wife
in fee.*

2. (b) WHEREAS (*testator*) late of, &c., deceased, by his last will, dated on or about the day of , amongst other devises and bequests, devised the hereditaments and premises hereinafter described unto the said (*Christian name*), the wife of the said (*husband*), by her then maiden name of (*maiden name of wife*), her heirs and assigns for ever; and appointed (*executors*) joint executors in trust of his said will, which, the said (*testator*) having died on or about the day of , without having altered or revoked, was duly proved by the said (*executors*) in the Prerogative Court of the Archbishop of Canterbury on the day of .

*Of marriage of
husband and
wife.*

3. AND WHEREAS the said (*Christian name*), the wife of the said (*husband*), intermarried with her said husband on or about the day of , in the year , but no settlement, either previously or subsequently to the said marriage, hath ever been made.

*Of desire of
husband and
wife to settle
the premises.*

4. AND WHEREAS the said (*husband*) and (*Christian name*) his wife, are desirous of settling and assuring the said hereditaments and premises, to the uses, upon the trusts, and for the ends, intents and purposes hereinafter limited, expressed and declared.

Testatum.

5. NOW THIS INDENTURE WITNESSETH, that for the purpose of carrying the aforesaid desire into effect, and in consideration of the sum of 5s. paid by the said (*trustees*) to the said (*husband*) and (*Christian name*) his wife, on the execution hereof, the receipt of which is hereby acknowledged, THEY the said (*husband*) and

(b) If the wife takes by descent, this clause must be omitted and the clause beneath substituted :

*Recital of
descent of
property on
wife.*

A. AND WHEREAS (*A. B.*), late of, &c., deceased, having died on or about the day of , in the year 18 , intestate, the hereditaments and premises hereafter particularly described, descended upon and became vested in the said (*Christian name*), the wife of the said (*husband*), as the only surviving niece and heiress-at-law of the said (*A. B.*), and who thereupon, with the said (*husband*), her husband, entered upon and became seised of the said hereditaments and premises in her right.

(*Christian name*) his wife DO by these presents (intended to be duly acknowledged by the said (*Christian and surname of wife*), in pursuance of an act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance,) grant, release and confirm unto the said (*trustees*) and their heirs, ALL, &c. [DESCRIBE *parcels*, AND INSERT *general words*], and all the estate, right, title and interest, both legal and equitable, of them the said (*husband*) and (*Christian name*) his wife therein.

No. II.

Post-Nuptial
Settlement, by
which Freehold
Estates devised
to Wife are
settled to such
Uses as she
shall appoint.

6. TO HAVE AND TO HOLD the said (*short general description*), Habendum. and all and singular other the hereditaments and premises hereinbefore described, and hereby granted and released, with their appurtenances, unto the said (*trustees*) and their heirs, to the uses, upon the trusts, and for the ends, intents and purposes hereinafter limited, expressed and declared of and concerning the same (that is to say),

7. TO SUCH USES, upon such trusts, and for such ends, intents and purposes, and with, under and subject to such powers, provisions, charges, declarations and agreements as the said (*Christian name*), the wife of the said (*husband*), shall from time to time, or at any time, and notwithstanding her present or any future coverture, by deed or will direct, limit, appoint, give or devise; and in default of and until such direction, limitation, appointment, gift or devise, and so far as such direction, limitation, appointment, gift or devise, if incomplete, shall not extend,

8. TO THE USE of the said (*trustees*) and their heirs during the natural life of the said (*Christian name*), the wife of the said (*husband*), for and during the term of her natural life, upon trust for her sole and separate use, (c) free from the control, debts or

To the separate
use of wife for
life.

(c) Although a married woman is disabled by the rules of common law from disposing of her real estate, except, formerly, by concurring with her husband in a fine or recovery, and now by an acknowledgment in pursuance of the Fine and Recovery Substitution Act, she may, nevertheless, have an absolute and uncontrollable power of disposition conferred upon her through the medium of a power or a trust, and, it is now clearly settled, may dispose of her estate even at law if it is limited to such uses as she shall appoint: (*Harris v. Graham*, 1 Roll. Abr. 329; *Gibbons v. Moulton*, Finch. 346; *Daniel v. Ubley*, Latch. 39; *Travel* A married woman may have an absolute power of disposition conferred upon her through the medium of a power.

No. II.

*Post-nuptial
Settlement, by
which Freehold
Estates devised
to Wife are
settled to such
Uses as she
shall appoint.*

—
To the use of
husband for life.

engagements of her present (*husband*), the said (*husband*), or of any future husband or husbands with whom she may at any time intermarry, and after her decease, in case the said (*husband*) shall happen to survive her,

9. TO THE USE of the said (*husband*) and his assigns for and during the term of his natural life, without impeachment of waste; and after his decease, of the survivor of them the said (*husband*) and (*Christian name*) his wife,

Ultimate
limitation to
right heirs of
wife.

10. TO THE USE of the right heirs of the said (*Christian name*), the wife of the said (*husband*), for ever, and to, for and upon no other use, trust, end, intent or purpose whatsoever. [ADD *power to change trustees, ut ante*, Section II., No. I., clause 45, p. 684.]

IN WITNESS, &c.

N.B.—A form of Memorandum of Acknowledgment, *ut ante*, Part II., No. VII., clause 1, p. 67, must be indorsed on the above deed.

v. Travel, 3 Atk. 311; *Driver v. Thompson*, 4 Taunt. 294; *Bodington v. Abernethy*, 5 B. & C. 756; S. C., 8 Dow. & Ry. 626; *Rex v. Lord of the Manor of Oundle*, 1 Ad. & Ell. 283; S. C., 1 Nev. & Man. 586; 3 Nev. & Man. 484, whilst her right to make an appointment of a mere trust or equitable estate has been long since recognised (*Coomes v. Elling*, 3 Atk. 679; *Peacock v. Moncke*, 2 Ves. 191; *Tethyplace v. Gorges*, 3 Bro. C. C. 8; *Wagstaff v. Smith*, 9 Ves. 520; *Rich v. Cockell*, *ib.* 369; *Parker v. Brook*, *ib.* 583; *Witts v. Dawkins*, 12 Ves. 501; *Sturges v. Corp.*, 13 Ves. 190; *Brown v. Like*, 14 Ves. 302; *Acton v. White*, 1 Sim. & Stu. 429; *Glyn v. Bagster*, 1 You. & Jerv. 329), which power extends as well to a copyhold, as a freehold estate (*Rex v. Lord of the Manor of Oundle, sup.*), and may be limited to an unmarried woman who afterwards marries (*Gibbons v. Moulton, sup.*), or to a woman whilst she is actually under coverture, or upon her marriage and she survives her husband, and afterwards marries again (*Bayley v. Warburton*, 2 Com. 294; *Burne v. Mann*, 1 Ves. 157), in all of which cases she may execute the power without her husband's concurrence.

No. III.

VOLUNTARY SETTLEMENT, (a) BY WHICH FREEHOLD AND LEASEHOLD ESTATES, AND A POLICY OF ASSURANCE ON ONE OF THE LIVES UPON WHICH A PORTION OF THE LEASEHOLD PROPERTY IS DETERMINABLE, IS CONVEYED TO TRUSTEES, IN TRUST TO PERMIT SETTLOR TO RECEIVE THE RENTS AND PROFITS FOR LIFE, AND THEN UPON TRUST FOR THE SEPARATE USE OF HIS WIFE FOR LIFE, IN CASE OF HER SURVIVING HIM, WITH THE ULTIMATE LIMITATION TO THEIR ONLY SON ABSOLUTELY. THE PROCEEDS OF THE POLICY OF ASSURANCE ARE DIRECTED TO BE INVESTED, AND THE SECURITIES TO BE HELD, UPON THE SAME TRUSTS AS THE LEASEHOLD PROPERTY. THE MONEYS ARISING FROM A POLICY OF ASSURANCE FOR £1,000, ON THE SETTLOR'S LIFE, ARE DIRECTED TO BE INVESTED, AND THE DIVIDENDS AND INTEREST ARISING THEREFROM, AND ALSO FROM £5,750 THREE PER CENT. CONSOLS, TO BE PAID TO WIFE FOR LIFE UPON TRUST FOR HER SEPARATE USE, WITH ULTIMATE TRUST FOR SETTLOR'S THREE DAUGHTERS, AS TENANTS IN COMMON.

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| <ol style="list-style-type: none"> 1. Parties. 2. Recital that settlor is possessed of the property comprised in the settlement. 3. That he is desirous of settling his said property. 4. Of transfer of stock into the names of trustees. | <ol style="list-style-type: none"> 5. Testatum, by which freehold and leasehold property, and policies of assurance, are conveyed to trustees. 6. Habendum: freeholds to trustees in fee. 7. Habendum: leaseholds for residue of respective terms therein. |
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(a) A post-nuptial settlement, although purely voluntary, will be good against the settlor; but if he were in insolvent circumstances, or indebted at the time it was made, it will be void as far as his creditors are concerned: (stat. 13 Eliz. c. 5; *Turner's case*, 3 Rep. 81 b.; *Lord Teynham v. Mullins*, 1 Mod. 119; How far voluntary settlement will be valid as against creditors.

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|---|--|
| <p>8. Habendum : policies of assurance.</p> <p>9. Declaration that settlor shall receive rents and profits for life.</p> <p>10. Trust for separate use of wife for life.</p> <p>11. Ultimate limitation to settlor's only son absolutely.</p> <p>12. Declaration of trusts of moneys arising from policy of assurance upon one of the lives whereon the term in a portion of leasehold premises is determinable.</p> <p>13. Direction that trustees shall invest moneys arising from policy of assurance on settlor's wife.</p> | <p>14. Trustees to pay dividends of 5,750<i>l.</i>, Three per cent. consols, to settlor for life; and after his decease,</p> <p>15. To pay dividends of said 5,750<i>l.</i> and interest to arise from securities in which moneys arising from policy of settlor's life are invested to wife for life upon trust for her separate use.</p> <p>16. Ultimate trust for settlor's three daughters absolutely as tenants in common.</p> <p>17. Power to sell out stock and invest the proceeds, with power to vary securities.</p> <p>18. Power for trustees to give receipts.</p> |
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Parties.

1. THIS INDENTURE made the day of A.D. 18 ,
BETWEEN (settlor), of, &c., of the one part, and (two trustees), of,
&c., of the other part.

Russell v. Hammond, 1 Atk. 16; *Lush v. Wilkinson*, 5 Ves. 384; *Holloway v. Millard*, 1 Mad. 414.) And it seems, that if there is any fair reason to presume the settlement was made with a fraudulent intention, and with a view of over-reaching, delaying or defeating creditors, it may be set aside without even proving that the settlor was insolvent at the time the deed was executed: (*Walker v. Burrows*, 1 Atk. 93; *Stileman v. Ashdown*, 2 Atk. 481; *Rider v. Kidder*, 13 Ves. 360; *Richardson v. Smallwood*, 18 Ves. 55; *Townsend v. Westacott*, 2 Beav. 340). But the circumstance of the settlor being slightly in debt, or if the debts, although considerable, are secured by a mortgage of other adequate property, will not impeach the settlement: (2 Bro. C. C. 90, 92; 1 Mad. 418.)

Voluntary
settlement void
as against
subsequent
purchasers for
valuable
consideration.

But although a voluntary settlement is said to be binding on the settlor, it is in his power at any time to defeat it by selling the property to a *bond fide* purchaser for valuable consideration. The statute of 27 Eliz. c. 4, expressly declares all voluntary conveyances to be void as against such purchasers: (*Fitzer v. Fitzer*, 2 Atk. 513; *White v. Samson*, 3 Atk. 412; *Hill v. Bishop of Exeter*, 2 Taunt. 82, 83); consequently in a case of this description, it is immaterial whether the purchaser has, or has not notice of the settlement: (*Pulvertoft v. Pulvertoft*, 18 Ves. 90; *Buckle v. Mitchell*, *ib.* 110; *Metcalf v. Pulvertoft*, 1 Ves. & Bea. 84), the statute receiving the same construction in courts of equity as in courts of law, and comprehending copyhold as well as freehold property: (*Doe v. Bottriel*, 5 B. & A. 131; *Currie v. Nind*, 1 Myl. & Cra. 580.) So, where a power is exercised under a voluntary settlement, and that power is afterwards executed for a valuable consideration, the purchaser will have the benefit of it: (*Hart v. Middlehurst*, 3 Atk. 377.) Neither is it necessary, in order to enable a purchaser to obtain the benefit of this statute, that the legal estate should have been actually conveyed to him, for an equitable interest entitling a party by contract to clothe it with a legal title, makes such a party a purchaser in the eye of a court of equity: (*Buckle v. Mitchell*, *sup.*) And although a contrary doctrine not long since prevailed (*Kerson v. Domen*, 9 Bing. 76), it has recently been

2. WHEREAS the said (*settlor*) is seised and possessed, or otherwise well and sufficiently entitled unto the freehold and leasehold estates specified and set forth in the schedule hereunto annexed, and also to the capital sum of 5,750*l.*, Three per cent. Consolidated Bank Annuities, and also to two policies of assurance on lives, one in the West of England Insurance Company in the sum of 1,000*l.* upon his own life, and the other in the Law Property Assurance and Trust Society for securing the sum of 850*l.*, to be paid to the said (*settlor*), his executors, administrators and assigns, on the determination of the term in the leasehold premises secondly hereinafter mentioned.

No. III

Voluntary Settlement, by which Freehold Estates and Leasehold Estates and Policy of Assurance, are conveyed to Trustees.

Recital that settlor is possessed of the property comprised in the settlement.

That he is desirous of settling his said property.

3. AND WHEREAS the said (*settlor*) is desirous of settling and

decided (*Lister v. Turner*, 7 L. T. 3), that where the title deeds are deposited by way of security with a banker, the latter will be considered a purchaser within the meaning of this act, and consequently, as such, be entitled to avoid the settlement.

But the settlor will not be allowed to defeat the settlement by a subsequent voluntary conveyance, or upon a mere nominal consideration (*Roe v. Routledge*, Cow. 705; *Metcalfe v. Pulvertoft*, *sup.*) unless he has reserved to himself a power of revocation by the prior settlement. The validity of a voluntary deed assigning property to trustees for certain uses, and declaring that until the trust premises should be transferred, the settlor would hold the same upon the same trusts, came before Wood, V. C., in the recent case of *Donaldson v. Donaldson*, 23 L. T. 306. In that case, A. B. was *cestui que trust* of stock vested in trustees of his settlement for him absolutely. By a voluntary deed he assigned personal estate to trustees, upon trusts for certain persons, and he declared that until the trust premises should be duly transferred, he would hold the same upon the same trusts. The stock was never transferred, and no notice of the deed was given to the trustees of the settlement in whose name it stood; it was held that the stock passed by the deed, as there was a complete declaration of trust of it, which the court would execute in favour of the *cestuis que trust*.

Settlor cannot defeat the settlement by a subsequent voluntary conveyance.

A power of this kind was at one time considered to render the instrument testamentary, and to cause all the consequences of a will to attach upon it (*Attorney-General v. Jones*, 3 Pri. 460.) But the case upon which this doctrine was founded, was decided upon principles altogether so erroneous, as to have met with the universal disapprobation of the profession, and in a subsequent case (*Thompson v. Browne*, 3 Myl. & Kee. 32), Lord Cottenham, then Sir C. C. Pepys, M. R., is reported to have said, that "if there be anything in that decision (*Attorney-General v. Jones*, *sup.*) to support the notion that where a person by deed settles property of his own during his life, and after his decease for the benefit of other persons, a power of revocation reserved in such a deed alters the character of the instrument, and renders it testamentary, and consequently subject to legacy duty, I can only say, that if this were law, a great number of transactions, the validity of which has never been doubted, would be liable to be impeached." And his Honour accordingly held, that a power of revocation, which in the present case was annexed to a voluntary settlement, did not confer a testamentary character upon the instrument so as to render it liable to legacy duty. Hence the doctrine laid down in *Attorney-General v. Jones*, if not overruled by more recent decisions, would scarcely be followed in any case that was not precisely similar in every essential particular.

Power of revocation will not render an instrument testamentary.

No. III.

*Voluntary
Settlement, by
which Freehold
and Leasehold
Estates, and
Policy of
Assurance, are
conveyed to
Trustees.*

Of transfer of
stock into the
names of
trustees.

Testatum, by
which the
freehold
and leasehold
property, and
policies of
assurance, are
conveyed to
trustees.

assuring the said freehold and leasehold estates, funded property, and policies of assurance in manner hereinafter mentioned.

4. AND WHEREAS for the purpose of carrying such desire into effect, the said (*settlor*) hath lately transferred the said sum of 5,750*l.*, Three per cent. Consolidated Bank Annuities, unto the said (*trustees*), and the same is now standing in their names in the books of the Governor and Company of the Bank of England.

5. NOW THIS INDENTURE WITNESSETH that, in order to carry his desire fully into effect, and also in consideration of the natural love and affection which the said (*settlor*) hath and beareth towards his wife and children hereinafter mentioned, and also in consideration of the sum of 5*s.* sterling paid to him by the said (*trustees*), on the execution hereof, the receipt of which is hereby acknowledged, HE the said (*settlor*) DOTH by these presents (according to the respective natures and qualities of the said premises), grant, release, assign and confirm unto the said (*trustees*), their heirs, executors, administrators and assigns; *First*, all and singular the freehold messuages, farms, tenements and hereditaments specified and set forth in the schedule hereunto annexed, AND all rights members, privileges and appurtenances thereunto belonging, AND all the estate, right, title and interest, of him the said (*settlor*) therein. *Secondly*, all that leasehold estate called B., and also all that leasehold estate called C. L., all which said premises are also specified and set forth in the schedule hereunto annexed, and which said first mentioned leasehold premises are now vested in the said (*settlor*) for the residue of an absolute term of 1,000 years; and which leasehold premises secondly hereinbefore mentioned are now held by the said (*settlor*) for the residue of a term of ninety-nine years, determinable on three lives, in the said last mentioned lease described, all of whom are still living, created by an indenture dated the day of , and made between (*lessor*) of the one part, and (*lessee*) of the other part, the residue of which said term has, by divers mesne assignments, and ultimately by an indenture date the day of , and made between (*former assignee*) of the one part, and the said (*settlor*) of the other part, become vested in the said (*settlor*) for all the unexpired residue of the said term of ninety-nine years, determinable as aforesaid.

Thirdly, all that the aforesaid policy of assurance, No. 37,551, under the hands of three of the directors of the West of England Insurance Company, dated the day of , whereby the sum of 1,000*l.* is expressed to be assured by the said company upon the life of the said (*settlor*), in consideration of the annual premium of £ ; AND also all that deed poll or instrument in writing, being a policy of assurance, No. 125, in the Law Property Assurance and Trust Society, under the common seal and hands (*b*) of two of the directors of the said society, whereby the payment of 850*l.* sterling is assured to be paid to the said (*settlor*), his executors, administrators and assigns, on the determination of the said term in the said leasehold premises secondly hereinbefore mentioned, in consideration of the annual premium of £ , TOGETHER with all sum and sums of money to become due and payable upon or by virtue of the said policies of assurance respectively, and all the estate, right, title and interest of him the said (*settlor*) therein, with full power and authority for the said (*trustees*), or the survivor of them, his executors or administrators, and as the true and lawful attorneys and attorney irrevocable of him the said (*settlor*), and in his name to ask, demand, sue for, recover and receive all sum and sums of money to become due or recoverable upon or by virtue of the said hereby assigned policies of assurance, or either of them, and upon receipt thereof to give sufficient releases and discharges for the same, and one or more attorney or attorneys for all, any or either of the purposes aforesaid to substitute and appoint, and such substitution and appointment from time to time at pleasure to revoke.

No. III.
—
Voluntary Settlement, by which Freehold and Leasehold Estates and Policy of Assurance, are conveyed to Trustees.
—

Power of attorney.

6. TO HAVE AND TO HOLD the said (*short general description of freehold property*), and all and singular other the freehold hereditaments and premises specified and set forth in the schedule hereunto annexed, with their appurtenances, unto the said (*trustees*) and their heirs, to the uses, upon the trusts, and for the ends, intents and purposes hereinafter limited, expressed and declared.

Habendum :
freeholds to
trustees in fee.

7. AND TO HAVE AND TO HOLD the said leasehold messuages Habendum :

(*b*) The assurances effected in the Law Property Assurance and Trust Society are under seal; those effected in the West of England Insurance Company are under hand only. Practical remarks.

No III.

*Voluntary
Settlement, by
which Freehold
and Leasehold
Estates, and
Policy of
Assurance, are
conveyed to
Trustees.*

leaseholds for
residue of
respective
terms therein.

Habendum :
policies of
assurance.

and tenements firstly and secondly hereinbefore mentioned, and all and singular other the leasehold premises specified and set forth in the schedule hereunto annexed, with their appurtenances, unto the said (*trustees*), their executors, administrators and assigns, for all the unexpired residues of the said several terms of years, 1,000 years and ninety-nine years, therein determinable as aforesaid; and for all other the estate, term and interest of him the said (*settlor*) therein, upon the trusts, and for the ends, intents and purposes hereinafter limited, expressed and declared.

8. AND TO HAVE, HOLD, RECEIVE AND TAKE the said two several policies of assurance, and all and singular other the premises lastly hereinbefore assigned, and all sum and sums of money, benefit and advantage to be received thereon or derived therefrom, unto the said (*trustees*), their executors, administrators and assigns, as and for their proper moneys, chattels and effects; nevertheless upon and for the trusts, and for the ends, intents and purposes hereinafter declared.

Declaration
that settlor
shall receive
rents and profits
for life.

9. AND IT IS HEREBY DECLARED, that the said (*trustees*), and the survivor of them, his heirs, executors or administrators, or other the trustees or trustee for the time being of these presents, do and shall stand and be possessed of the said freehold and leasehold estates, UPON TRUST to permit and suffer the said (*settlor*) and his assigns to hold and enjoy, and to receive and take the rents, issues and profits thereof, for and during the term of his natural life; and as to the said freehold premises, such tenure and enjoyment to be without impeachment of waste; and after his decease, in case the said (*wife*) shall happen to survive him,

Trust for
separate use of
wife for life.

10. UPON TRUST to pay the rents, issues and profits of the said freehold and leasehold premises unto (*wife*) for the term of her natural life, for her sole and separate use, free from the control, debts or agreements of any husband or husbands with whom she may at any future time intermarry, and so that she may have no power to alienate or anticipate the growing proceeds thereof, her receipt alone being a sufficient discharge for the same; (c) and immediately after her decease,

(c) Whenever it is intended to create an unalienable personal trust in favour

11. TO THE USE of and in trust for (*A. B.*), the only son and heir apparent of the said (*settlor*), his heirs, executors, administrators and assigns, according to the several natures and qualities of the said premises, absolutely and for ever, and to convey, assign and assure the same to him and them accordingly.

No. III.

Voluntary Settlement, by which Freehold and Leasehold Estates, and Policy of Assurance, are conveyed to Trustees.

12. AND IT IS HEREBY FURTHER DECLARED AND AGREED, that if the said term in the said leasehold premises secondly hereinbefore mentioned, shall determine during the continuance of the trusts herein contained, THEN the said (*trustees*), and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, do and shall lay out and invest all sums of money to be received by them upon or by virtue of the said policy of assurance secondly hereinbefore mentioned, in government security, or in some of the public stocks or funds, or by way of mortgage upon good and sufficient freehold, leasehold, or copyhold estates in England or Wales, but not in Ireland, which said stocks, funds and securities it shall be lawful for the said (*trustees*) or the survivor of them, his executors or administrators, from time to time to alter, vary and transpose as may be deemed expedient; provided nevertheless that no such investment or altera-

Ultimate limitation to settlor's only son absolutely. Declaration of trust of moneys arising from policy of assurance upon one of the lives whereon estate in a portion of leasehold premises is determinable.

of a married woman, so as to provide her with a maintenance which neither she herself, nor her husband can destroy, the trustees should be directed to pay the rents, dividends, interest, &c., to her for her separate use, and so that she should have no power to dispose of the same by way of anticipation, for without the latter restriction, the limitation simply in trust for her separate use, will give her an absolute power of disposition, and enable her by a sweeping appointment to pass away her whole interest: (*Pybus v. Smith*, 3 Bro. C. C. 347; *Ellis v. Atkinson*, *ib.* 565; *Whistler v. Newman*, 4 Ves. 129; *Spilling v. Rockfort*, 8 Ves. 164; *Parkes v. White*, 11 Ves. 221; *Witts v. Dawkins*, 15 Ves. 581; *Sturges v. Corp.*, 13 Ves. 190; *Brown v. Like*, 14 Ves. 302; *Acton v. White*, 1 Sim. & Str. 429; *Glyn v. Bagster*, 1 You. & Jerv. 329.) At one time indeed it was doubted whether the restriction against anticipation was valid, even during the coverture, upon the principle that, wherever property is given, it must be taken with all its incidents, but after a considerable conflict of opinion, it seems to have been at length determined, that the restriction is binding during coverture, although created whilst the woman was unmarried, or without reference to any particular marriage (*Tullet v. Armstrong*, Beav. 1; *Scarborough v. Borman*, S. C. 4 Myl. & Cra. 477): but that such restriction will only be binding during her coverture, for whilst sole, whether before her marriage, or during her widowhood, she will retain or regain her power of alienation, though liable to be again deprived of it by her subsequent coverture: (*Jones v. Salter*, 2 Russ. & Myl. 208; *Barton v. Briscoe*, Jac. 603; *Newton v. Reid*, 4 Sim. 141; *Browne v. Pocock*, 3 Sim. 503; *Woodmeston v. Walker*, 2 Russ. & Myl. 197.)

Practical suggestions as to limitations to the separate use of married woman.

No. III.

*Voluntary
Settlement, by
which Freehold
and Leasehold
Estates and
Policy of
Assurance, are
conveyed to
Trustees.*

tion of such securities shall be effected during the lifetime of the said (*settlor*), without his consent in writing thereunto being first had and obtained. AND do and shall pay and apply the dividends, interest, and annual proceeds, and stand possessed of the said capital or principal of the said stocks, funds and securities, upon such and the same trusts, or such of them as may be then subsisting, as are hereinbefore declared concerning the said leasehold premises, or as near thereto as the different natures and qualities of the respective properties will admit of.

Direction that
trustees shall
invest moneys
arising from
policy of
assurance on
settlor's life.

13. AND IT IS HEREBY DECLARED, that the said trustees and trustee for the time being of these presents, do and shall lay out and invest the moneys arising from the said policy of assurance firstly hereinbefore mentioned, upon similar securities as are hereinbefore mentioned with respect to moneys to arise from the said policy of assurance secondly hereinbefore mentioned, which said stocks, funds and securities, it shall be lawful for the said trustees or trustee for the time being to alter, vary and transpose, as they or he shall in their discretion think fit. AND do and shall stand and be possessed of the said last-mentioned trust moneys, stocks, funds and securities, upon the trusts hereinafter declared of and concerning the same.

Trustees to pay
dividends of
5,750*l.*, Three
per cent.
consols, to
settlor for life;
and after his
decease,

14. AND IT IS HEREBY DECLARED, that the said (*trustees*), or trustee for the time being of these presents, do and shall stand and be possessed of the said capital sum of 5,750*l.*, Three per cent. Consolidated Bank Annuities, so transferred into the names of them the said (*trustees*) as aforesaid, and also of any stocks, funds and securities, whereupon the same may be invested in pursuance of the power hereinafter contained, UPON TRUST to pay the interest, dividends and annual proceeds thereof, as and when the same shall become payable, unto the said (*settlor*) and his assigns for the term of his natural life; and after his decease, in case the said (*wife*) shall survive him,

To pay
dividends of
5,750*l.* and
interest, to
arise from
securities in
which moneys
arising from

15. UPON TRUST to pay and apply the interest, dividends and annual proceeds of the said sum of 5,750*l.*, Three per cent. Consolidated Bank Annuities, as also the dividends, interest and annual produce to arise from the said trust moneys, stocks, funds and

securities in or upon which the moneys to arise from the said policy of assurance hereinbefore firstly mentioned shall be invested, as and when the same shall become payable, unto the proper hands of the said (*wife*), for her sole and separate use, free from the control, debts or engagements of any husband or husbands with whom she may at any future time intermarry, and so that she shall have no power to alien or anticipate the growing payments thereof, her receipt alone being a sufficient discharge for the same; and after the decease of the survivor of them, the said (*settlor*) and (*wife*),

No. III.

Voluntary Settlement, by which Freehold and Leasehold Estates, and Policy of Assurance, are conveyed to Trustees.

policy on settlor's life are invested to wife for life, upon trust for her separate use.

16. UPON TRUST for (*B. B.*), (*C. B.*) and (*D. B.*), the three daughters of the said (*settlor*) and (*wife*), and their respective executors, administrators and assigns, equally to be divided between them, share and share alike, as tenants in common absolutely and for ever.

Ultimate trust for settlor's three daughters absolutely as tenants in common.

17. AND IT IS HEREBY FURTHER DECLARED, that it shall be lawful for the trustees or trustee for the time being of these presents, at any time during the continuance of the trusts herein contained, and during the lifetime of said (*settlor*), with his consent in writing, and after his decease with such like consent of such the parties beneficially interested as shall be of the full age of twenty-one years, and whether covert or sole, to sell out the said capital sum of 5,750*l.*, Three per cent. Consolidated Bank Annuities, and to lay out and invest the same in such or the like securities as are hereinbefore mentioned concerning the moneys to arise from the said policies of assurance, and also from time to time, with such consent as aforesaid, to alter, vary and transpose such stocks, funds and securities as may be deemed expedient; and that the said trustees or trustee for the time being, do and shall stand and be possessed of the said last-mentioned trust moneys, stocks, funds and securities, upon such and the same trusts as are hereinbefore declared concerning the said capital sum of 5,750*l.*, Three per cent. Consolidated Bank Annuities, or such of them as shall be then subsisting.

Power to sell out stock and invest the proceeds, with power to vary securities.

18. AND IT IS HEREBY LASTLY DECLARED, that the receipt or receipts in writing of the trustees or trustee for the time being

Power for trustees to give receipts.

No. III.

*Voluntary
Settlement, by
which Freehold
and Leasehold
Estates and
Policy of
Assurance, are
conveyed to
Trustees.*

of these presents, (d) for any moneys, funds or securities, which may be paid or transferred to them or him in pursuance of the trust herein contained, shall be a sufficient discharge to the person or persons paying the same, and shall fully exonerate him, her or them from being concerned to see to the application thereof, and from all responsibility with respect to the misapplication or non-application thereof. [ADD *power to change trustees, ut ante*, Section II., No. I., clause 45, p. 684.]

IN WITNESS, &c.

Practical
observations.

(d) It is a far better plan, in the clause authorising trustees to give receipts, instead of naming the trustees, to declare that the receipts of the trustees or trustee for the time being, shall be a sufficient discharge; for if the names of the trustees are inserted, then every trustee who has accepted the trust must concur in such receipt, although he may have released the estate to the other trustees: (*Crewe v. Dickin*, 4 Ves. 97); because, notwithstanding the release of his estate to his co-trustees, he cannot delegate the personal trust or confidence reposed in him. But by adopting the course above recommended, it will be unnecessary for a trustee who has released the estate to join in any receipt, and there cannot be the slightest ground to contend that a personal trust or confidence was given to the trustees named in the instrument creating the power; consequently, the receipt of the trustees acting in the trusts for the time being, would satisfy as well the words as the spirit of the clause.

No. IV.

CONVEYANCE BY A WIDOW WHO TAKES A LIFE INTEREST IN FREEHOLD AND LEASEHOLD PROPERTY UNDER A VOLUNTARY SETTLEMENT, AND ALSO IN A POLICY OF ASSURANCE ON A PORTION OF THE LEASEHOLD PROPERTY, OF ALL HER ESTATE AND INTEREST TO HER SON, THE LATTER OF WHOM IS ENTITLED IN REVERSION TO THE SAME PROPERTY EXPECTANT ON HER DECEASE, SUBJECT TO AN EXISTING MORTGAGE, WHICH HAS BEEN CREATED BY THE WIDOW AND SON ON THE SAME PREMISES, HE COVENANTING TO INDEMNIFY HER AGAINST THE MORTGAGE DEBT.

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|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of voluntary settlement. 3. Of death of settlor. 4. Of mortgage by widow and son. 5. That principal is still due, but that all interest has been paid. 6. Of agreement to purchase widow's life interest. 7. Testatum. | <ol style="list-style-type: none"> 8. Habendum. 9. Covenant from widow that she has good right to convey and assign. 10. For quiet enjoyment, and freedom from incumbrances. 11. For further assurance. 12. Covenant from son to indemnify widow against all demands in respect of the mortgage debt. |
|---|--|

1. THIS INDENTURE, made the day of A. D. 18 , Parties.
 BETWEEN (*settlor's wife, mentioned in last precedent, but now his widow*) of, &c., of the one part, and (*son, mentioned in last precedent*) of, &c., of the other part.

2. WHEREAS by a deed of voluntary settlement, made subsequently to the marriage of (*settlor*), the husband of the said (*widow*), with the said (*widow*), dated the day of , and made between the said (*settlor*) of the one part, and the said (*trustees*) of the other part, the freehold and leasehold premises

Recital of
voluntary
settlement.

No. IV.

*Conveyance
by a Widow
who takes a
Life Interest in
Freehold and
Leasehold
Property under
a voluntary
Settlement, &c.*

specified and set forth in the schedule hereunto annexed, together with a policy of assurance in the Law Property Assurance and Trust Society for the sum of 850*l.*, to be paid on the expiration of the term in the said leasehold premises secondly thereafter mentioned, with other property of the said (*settlor*), were conveyed, assigned, limited and assured unto the said (*trustees*), their heirs, executors, administrators and assigns, according to the respective natures and qualities of the said premises; UPON TRUST to permit the said (*settlor*) to receive the rents and profits of the said freehold and leasehold premises for the term of his natural life; and after his decease, in case the said (*widow*) should happen to survive him, UPON TRUST to pay the rents, issues and profits of the said freehold and leasehold premises unto the said (*widow*) for her life, for her sole and separate use, free from the control, debts or engagements of any husband or husbands with whom she might at any future time intermarry, and so that she should have no power to alienate or anticipate the growing proceeds thereof; (*a*) and immediately after the decease of the survivor of them the said (*settlor*) and (*widow*), TO THE USE of and in trust for the said (*son*), his heirs, executors, administrators and assigns, according to the respective natures and qualities of the said premises, absolutely and for ever; and that the said (*trustees*) should convey, assign and assure the same to him and them accordingly. AND it was, by the now reciting indenture, also declared, that the said (*trustees*) of the now reciting indenture for the time being, should be possessed of the moneys arising from the said policy of assurance, upon such and the same trusts as were therein declared concerning the said leasehold premises.

Of death of
settlor.

3. AND WHEREAS the said (*settlor*) died on or about the day of .

Of mortgage by
widow and son.

4. AND WHEREAS by indenture dated the day of , and made between the said (*widow*) of the first part, the said (*son*) of the second part, and (*mortgagee*) of the third part, the said (*widow*) and (*son*), in consideration of 250*l.* paid to them by the

(*a*) That a restriction against anticipation will not prevent a woman from disposing of property settled to her separate use, during such time as she is not under coverture, *ante*, p. 773.

said (*mortgagee*), did thereby grant, release and assign the said freehold and leasehold estates, policy of assurance and premises, unto the said (*mortgagee*), his heirs, executors, administrators and assigns, according to the respective natures and qualities of the said premises, for all the estate and interest of them the said (*wife*) and (*son*) therein; subject to a proviso for redemption, on payment by the said (*wife*) and (*son*), their heirs, executors, administrators or assigns, unto the said (*mortgagee*), his heirs, executors, administrators and assigns, of the sum of 250*l.* and interest, at the rate of 5*l.* for every 100*l.* by the year, on the day of then next, but in payment whereof default was made.

No. IV.

Conveyance by a Widow who takes a Life Interest in Freehold and Leasehold Property under a voluntary Settlement, &c.

5. AND WHEREAS the said principal sum of 250*l.* still remains due to the said (*mortgagee*) upon his said recited mortgage security, but all interest for the same has been paid up to the day of the date hereof. That principal is still due, but that all interest has been paid.

6. AND WHEREAS the said (*widow*) hath contracted to sell her life estate in the said freehold and leasehold estates, policy of assurance and premises to the said (*son*), subject to the said mortgage debt of 250*l.*, for the price of 1,500*l.* Of agreement to purchase widow's life interest.

7. NOW THIS INDENTURE WITNESSETH, that in pursuance of Testatum. the said recited agreement, and in consideration of the sum of 1,500*l.* sterling, this day paid by the said (*son*) to the said (*widow*), the receipt of which she doth hereby acknowledge, and therefrom doth also release and for ever discharge the said (*son*), his heirs, executors, administrators and assigns; SHE the said (*widow*) (and according to the nature of the property of the said premises), DOTII by these presents grant, release and also assign and confirm unto the said (*son*), his heirs, executors, administrators and assigns; *First*, all that and those the said freehold messuages, farms, tenements and hereditaments specified and set forth in the schedule hereto annexed; AND all rights, members, privileges and appurtenances thereunto belonging; and all the estate, right, title and interest of her the said (*widow*) therein. *Secondly*, all those the said leasehold messuages, farms, lands and premises, also specified and set forth in the said schedule hereunto annexed; and all rights, members, privileges and appurtenances thereunto belonging; AND all

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by a Widow
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the estate, right, title and interest of her the said (*widow*) therein. *Thirdly*, all that deed poll or policy of assurance, being a policy of assurance No. 125, in the Law Property Assurance and Trust Society, under the common seal and hands of two of the directors of the said society, whereby the sum of 850*l.* is assured to be paid on the determination of the term in the said leasehold premises secondly mentioned in the said schedule hereunto annexed; TOGETHER with all sum and sums of money to become due or recoverable upon or by virtue thereof; AND all the estate, right, title and interest of her the said (*widow*) therein; subject nevertheless, as to the whole of the aforesaid premises, to the said hereinbefore recited mortgage to the said (*mortgagee*), and to the principal moneys and interest thereby secured.

Habendum.

8. TO HAVE AND TO HOLD all and singular the aforesaid freehold and leasehold estates, policy of assurance, and all and singular other the premises hereinbefore mentioned to be hereby granted, released and assigned, with the appurtenances (subject nevertheless to the said hereinbefore recited mortgage to the said (*mortgagee*), and to the said principal moneys and interest thereby secured), unto and to the use of the said (*son*), his heirs, executors, administrators and assigns, according to the respective natures and qualities of the same premises, for and during all the remainder of the term of the natural life of the said (*widow*), and for all other the estate, term and interest of her the said (*widow*) therein.

Covenant from
widow that she
has good right
to convey and
assign.

9. AND the said (*widow*) doth hereby for herself, her heirs, executors and administrators, covenant with the said (*son*), his heirs, executors, administrators and assigns, that (notwithstanding any act done by her the said (*widow*) to the contrary,) she the said (*widow*) now hath in herself good right by these presents to grant, release, assign or otherwise assure the said freehold and leasehold estates, policy of assurance and premises (subject to the said recited mortgage), unto the said (*son*), his heirs, executors, administrators and assigns, according to the respective natures and qualities of the said premises, for all the remainder of the term of the natural life of the said (*widow*), in manner aforesaid, according to the true intent and meaning of these presents.

10. AND ALSO that (subject and chargeable as aforesaid) the same freehold and leasehold estates, policy of assurance and premises, shall or may be peaceably and quietly held and enjoyed, according to the limitations hereinbefore contained, without let, eviction or disturbance of or by the said (*widow*), or any other person or persons whomsoever, rightfully claiming under her; and that free from all incumbrances created by the said (*widow*), or any other person or persons rightfully claiming under her (save and excepting as appears by these presents.)

No. IV.
Conveyance
by a Widow
who takes a
Life Interest in
Freehold and
Leasehold
Property under
a voluntary
Settlement, &c.

For quiet
enjoyment, and
freedom from
incumbrances.

11. AND MOREOVER that the said (*widow*), and all persons rightfully claiming any estate or interest in the said freehold and leasehold estates, policy of assurance and premises, under or in trust for her, shall and will from time to time and at all times hereafter, at the request and costs of the said (*son*), his heirs, executors, administrators or assigns, enter into, execute and perfect all such further assurances for the more perfectly or satisfactorily granting, releasing, assigning and assuring the said freehold and leasehold estates, policy of assurance and premises, unto and to the use of the said (*son*), his heirs, executors, administrators and assigns, for and during the remainder of the term of the natural life of the said (*widow*), according to the respective natures and qualities of the said premises, and the true intent and meaning of these presents, as the said (*son*), his heirs, executors, administrators or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed.

For further
assurance.

12. AND the said (*son*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*widow*), her executors, administrators and assigns, that he the said (*son*), his heirs, executors, administrators or assigns, will pay or cause to be paid unto the said (*mortgagee*), his executors, administrators or assigns, the said sum of 250*l.* hereinbefore mentioned to be secured, and due and owing to the said (*mortgagee*), upon his said recited mortgage security; AND all interest which shall hereafter grow due in respect thereof. AND also that he the said (*son*), his heirs, executors or administrators, will at all times hereafter effectually indemnify the said (*widow*), her heirs, executors and administrators, and her and their lands, tenements, goods and

Covenant from
son to indemnify
widow against
all demands in
respect of the
mortgage debt.

No. IV.

*Conveyance
by a Widow
who takes a
Life Interest in
Freehold and
Leasehold
Property under
a voluntary
Settlement, &c.*

chattels, of and from the said sum of 250*l.* and interest as aforesaid; and also of and from all actions, suits and other proceedings whatsoever, which at any time or times hereafter may be brought or prosecuted against the said (*widow*), her heirs, executors, administrators or assigns; and also all costs, damages and expenses which she or they may pay or incur for or by reason of the nonpayment of the said sum of 250*l.* as aforesaid, or any cause, matter or thing in relation thereto.

IN WITNESS, &c.

THE SCHEDULE TO WHICH THE WITHIN-WRITTEN INDENTURE
REFERS. [*Here insert Schedule.*]

No. V.

VOLUNTARY SETTLEMENT, BY WHICH SETTLOR CONVEYS FREEHOLD AND LEASEHOLD ESTATES, AND ALSO HOUSEHOLD FURNITURE, UPON TRUST FOR SETTLOR FOR LIFE, AND THEN TO SELL AND INVEST THE PROCEEDS, WITH POWER TO VARY SECURITIES, AND TO STAND POSSESSED OF TRUST MONEYS, UPON TRUST, AS TO ONE MOIETY, FOR WIFE FOR LIFE FOR HER SEPARATE USE, WITH POWER OF APPOINTMENT, AFTER HER DECEASE, AMONGST HER CHILDREN BY THE SETTLOR; AND IN DEFAULT OF APPOINTMENT, AMONGST ALL THE CHILDREN EQUALLY; SONS AT TWENTY-ONE, AND DAUGHTERS AT TWENTY-ONE OR MARRIAGE. IF NO CHILD ACQUIRES A VESTED INTEREST, THEN UPON SIMILAR TRUSTS IN FAVOUR OF A SON OF SETTLOR BY A FORMER MARRIAGE; WITH A PROVISIO FOR DETERMINING HIS ESTATE IN CASE OF HIS BANKRUPTCY OR INSOLVENCY.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital that settlor being entitled to freehold and leasehold property and household furniture, is desirous of settling the same upon his wife and children. 3. Testatum, by which settlor conveys and assigns all his freehold and leasehold property and household furniture. 4. Habendum to trustees. 5. Upon trust for settlor for life. 6. Trusts for sale. 7. Upon trust for such person as settlor shall appoint. 8. In default of appointment, dividends of one moiety to be paid to wife for life for her separate use. | <ol style="list-style-type: none"> 9. Amongst her children as she shall by deed or will appoint. 10. Trusts for children; sons at twenty-one, and daughters at twenty-one or marriage. 11. Provisions for maintenance. 12. Power of advancement. 13. In case no child shall acquire a vested interest, upon trusts thereafter declared in favour of A. B. 14. Trust for A. B. for life, with similar trust in favour of his children as thereinbefore declared in favour of settlor's children by his present wife. |
|--|---|

No. V.

*Voluntary
Settlement, by
which Settlor
conveys
Freehold and
Leasehold
Estates, &c.*

Parties.

Recital that
settlor, being
entitled to
freehold and
leasehold
property, and
household
furniture, is
desirous of
settling the same
upon his wife
and children.

Testatum, by
which settlor
conveys and
assigns all
his freehold
and leasehold
property and
household
furniture.

Habendum to
trustees.

Upon trust
for settlor
for life.

Trusts for sale.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*settlor*), of, &c., of the one part, and (*two trustees*), of,
&c., of the other part.

2. WHEREAS the said (*testator*), being seised of the freehold and
leasehold hereditaments and premises, and also of the household
furniture and effects specified and set forth in the schedule here-
unto annexed, is desirous of settling and assuring the same for the
benefit of his wife and children hereinafter mentioned, upon the
trusts hereinafter declared.

3. NOW THIS INDENTURE WITNESSETH, that in consideration
of the natural love which the said (*settlor*) hath and beareth
towards his said wife and children, and also in consideration of 5s.
paid to him by the said (*trustees*), HE the said (*settlor*) DOTH by
these presents, and according to the several natures and qualities
of the premises, grant, release and assign unto the said (*trustees*),
their heirs, executors, administrators and assigns, all and singular
the freehold and leasehold hereditaments and premises, household
furniture and effects, specified and set forth in the schedule here-
unto annexed.

4. TO HOLD unto the said (*trustees*), their heirs, executors,
administrators and assigns, according to the respective natures and
qualities of the said premises, to the uses, upon the trusts, and for
the ends, intents and purposes hereinafter limited, expressed and
declared (that is to say),

5. UPON TRUST to permit and suffer the said (*settlor*) and his
assigns, to receive and take the rents, issues and profits of all and
singular the said freehold and leasehold hereditaments and premises,
and also to have the free and uninterrupted use and enjoyment of
the said household furniture and effects for and during the term
of his natural life; such limitation, so far as the said freehold
estates are concerned, to be without impeachment of waste; and
immediately after his decease,

6. UPON TRUST, that they the said (*trustees*), or the survivor of
them, his heirs, executors or administrators, or other the trustees

or trustee for the time being of these presents, do and shall, as soon as conveniently may be thereafter, make sale and absolutely dispose of all and singular the said freehold and leasehold hereditaments and premises, household furniture and effects, by public auction or private contract, either together or in parcels, and subject to such contracts, stipulations and agreements as the said trustees or trustee for the time being shall in their or his discretion think fit, and also with full power to buy in and resell the whole or any portion of the said premises, without being responsible for any loss that may be thereby incurred; and also to execute all such conveyances, assignments and assurances, for perfecting such sale or sales, as may be deemed necessary or expedient in that behalf. [INSERT *declaration that trustees shall stand possessed of purchase moneys upon trust to invest the same, with power of varying securities, ut ante, Section II., No. II., clauses 6 and 7, p. 689.*]

No. V.

*Voluntary
Settlement, by
which Settlor
conveys
Freehold and
Leasehold
Estates, &c.*

7. AND do and shall stand and be possessed of the said trust moneys, stocks, funds and securities, UPON TRUST for such person or persons, and in such shares and proportions, and for such ends, intents and purposes, and with, under and subject to such powers, provisoes, charges, declarations and agreements, as the said (*settlor*) shall from time to time or at any time by deed or will appoint.

Upon trust for such person as settlor shall appoint.

8. AND in default of such appointment, UPON TRUST to pay one moiety or equal half-part of the interest, dividends and annual proceeds of the said trust moneys, stocks, funds and securities, as and when the same shall arise and become payable unto (*wife*), the wife of the said (*settlor*), for the term of her natural life, for her sole and separate use, free from the control, debts or engagements of any husband or husbands with whom she may at any time intermarry, and so that she shall have no power to anticipate the growing proceeds thereof; and after her decease, then as to the said moiety in the said trust moneys, stocks, funds and securities,

In default of appointment, dividends of one moiety to be paid to wife for life for her separate use.

9. UPON TRUST for all and every the child and children of the said (*settlor*) by the said (*wife*), in such parts, shares, and proportions, and in such manner as the said (*wife*) shall at any time by deed or will appoint; and in default of such appointment,

Amongst her children as she shall by deed or will appoint.

No. V.

*Voluntary
Settlement, by
which Settlor
conveys
Freehold and
Leasehold
Estates, &c.*

Trusts for
children ; sons
at twenty-one,
and daughters
at twenty-one
or marriage.
Provisions for
maintenance.

10. UPON TRUST for all, any and every the child or children of the said (*settlor*) by the said (*wife*), who, being a son or sons, shall attain the age of twenty-one years, or who, being a daughter or daughters, shall attain that age or marry, to be equally divided between them, if more than one, as tenants in common; and if there shall be but one child, then UPON TRUST for that one child.

11. AND if, at the time of the decease of the said (*wife*), any of the said children, who, being a son or sons, shall be under the age of twenty-one years, or who, being a daughter or daughters, shall be under that age and unmarried, then and in such case the trustees or trustee for the time being of these presents shall apply a competent portion of the income arising from the presumptive shares or share of such children or child in or towards their, his or her maintenance and education.

Power of
advancement.

12. AND IT IS HEREBY ALSO FURTHER DECLARED, that it shall be lawful for the said trustees or trustee for the time being, with the consent of the said wife during her life, and after her decease, at their or his discretion, to advance any sum or sums of money, not exceeding in the whole one-half of the presumptive share or shares of such child or children, who, being a son or sons, shall be under the age of twenty-one years, or who, being a daughter or daughters, shall not have attained that age or been married, for the purpose of placing them, him or her, in or to any profession, trade, business, or employment.

In case no child
shall acquire a
vested interest,
upon trusts
thereinafter
declared in
favour of A. B.

13. AND in case no children or child of the said (*settlor*) by the said (*wife*) shall acquire a vested interest in the said trust moneys, stocks, funds and securities, then upon such trusts as are next hereinafter declared in favour of (*A. B.*) (*a son of settlor by a former marriage*), respecting the other moiety of the said trust moneys, stocks, funds and securities; (that is to say,)

Trusts for A. B.
for life, with
similar trust in
favour of his
children as
thereinbefore
declared in
favour of

14. AND AS TO, FOR AND CONCERNING the said remaining or other moiety in the said trust moneys, stocks, funds, and securities, but subject to the proviso next hereinafter contained, UPON TRUST to pay the interest, dividends and annual produce thereof unto the said (*A. B.*) for and during the term of his natural life; and after his

decease, upon such and the same trusts in favour of all and every the child or children of the said (*A. B.*), and with such and the same provisions for maintenance and advancement as are hereinbefore declared in favour of the children of the said (*settlor*) by the said (*wife*), and as are limited to take effect after her decease, in default of her exercising the power of appointment so limited to her as aforesaid. (*a*) [ADD power to change trustees, *ut ante*, Section II., No. I., clause 45, p. 684; ALSO, power for trustees to give receipts, *ut ib.*, No. III., clause 19, p. 700.]

No. V.

Voluntary
Settlement, by
which Settlor
conveys
Freehold and
Leasehold
Estates, &c.

Settlor's
children by
his present
wife.

IN WITNESS, &c.

(*a*) If *A. B.*'s estate and interest in the property is intended to determine in Practical case of his becoming bankrupt or insolvent, insert here a clause to that effect, suggestions. *ut ante*, Sect. I., No. IV., clause 4, p. 661.

No. VI.

VOLUNTARY SETTLEMENT, BY WHICH REAL AND PERSONAL ESTATE IS CONVEYED TO TRUSTEES TO SUCH USES AS SETTLOR SHALL BY DEED OR WILL APPOINT; AND IN DEFAULT THEREOF, UPON TRUST FOR SETTLOR FOR LIFE, EXCEPTING A LEASEHOLD MESSUAGE AND FURNITURE, WHICH IS TO BE HELD IN TRUST FOR D. S., THE PRESENT OCCUPANT DURING THE SETTLOR'S LIFETIME, AND AFTER HIS DECEASE, UPON TRUSTS FOR SALE, AND TO APPLY THE PROCEEDS, FIRST, IN DISCHARGE OF SETTLOR'S DEBTS AND FUNERAL EXPENSES, AND CERTAIN SPECIFIED SUMS OF MONEY, AND THEN TO INVEST A SUFFICIENT SUM OF THE TRUST MONEYS AS WILL PRODUCE THE ANNUAL SUM OF £150, WHICH IS TO BE PAID TO D. S. BY MONTHLY INSTALMENTS FOR HER LIFE, FOR HER SEPARATE USE, AND THE PRINCIPAL, TOGETHER WITH THE SURPLUS OF THE TRUST MONEYS, IS SETTLED UPON TRUST FOR SEVEN NATURAL CHILDREN OF THE SETTLOR BY D. S., IN EQUAL SHARES, AS TENANTS IN COMMON; SHARES OF SONS TO BE TRANSFERRED AT TWENTY-ONE, AND DAUGHTERS AT TWENTY ONE OR MARRIAGE; WITH PROVISIONS FOR SURVIVORSHIP AND ACCRUER; WITH ULTIMATE TRUST FOR THE SETTLOR'S NEXT-OF-KIN. (a)

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| <ol style="list-style-type: none"> 1. Parties. 2. Recital that settlor is desirous of settling the property. 3 Testatum. 4. Habendum. 5. Power of appointment. | <ol style="list-style-type: none"> 6. Upon trust to permit settlor to receive rents and profits, and to enjoy personal estate for life, excepting a leasehold messuage and furniture there excepted. 7. Leasehold messuage and furniture to be in trust for present occupant. |
|---|---|

Practical
observations.

(a) Deeds of gift were formerly made for the express purpose of evading the probate and legacy duties; but now, by the Succession Duties Act (16 & 17 Vict. c. 51), all property real or personal, which devolves upon any party after the death of the settlor, is rendered liable to the like duties as were formerly charged upon legacies. One important object may, however, be even yet attained by adopting an instrument of the above kind, in the saving the probate

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| <p>8. Power of sale.</p> <p>9. Declaration that trustees shall stand possessed of purchase-moneys,</p> <p>10. Upon trust to pay debts and funeral expenses and certain specified sums of money.</p> <p>11. Proviso that in case of the death of either of the parties in settlor's lifetime the gift to the party so dying shall fall into the surplus.</p> <p>12. Declaration that trustees shall invest sufficient moneys to produce the annual sum of 150<i>l.</i> and pay the same to D. S. by monthly</p> | <p>instalments for her separate use for life.</p> <p>13. And as to the surplus moneys, upon trust for settlor's seven natural children in equal shares, those of sons being transferable at twenty-one, and those of daughters at twenty-one or marriage:</p> <p>14. Provisions of survivorship and accruer.</p> <p>15. 'To invest trust moneys with power of varying securities.</p> <p>16. Ultimate trust for settlor's next-of-kin.</p> |
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1. THIS INDENTURE, made the day of A.D. 18 , Parties.
 BETWEEN (*settlor*), of, &c., of the one part, and (*two trustees*), of,
 &c., of the other part.

duties, the proctors charges, and the trouble always incidental to the probate of a will. It seems, however, to have been at one time considered that if a deed of voluntary settlement reserved a power of revocation to the settlor, it rendered the whole instrument testamentary, and that all the legal consequences of a will then attached upon it, and that it would require probate in like manner as an ordinary will. Objections usually taken to voluntary deeds of settlement.

This subject was fully discussed in *Attorney-General v. Jones* (3 Price, 360.) Attorney-General v. Jones.
 In that case A., by indenture dated the 25th of March, 1813, assigned for a nominal pecuniary consideration certain leasehold property to C. and D.; and also certain stock in the funds, *with the dividends which should be due thereon at the time of his decease, the arrears of any pension that might be due to him at his death** and his household furniture, &c., and all other his personal estate then belonging to him, or which should belong to him at his decease, upon trust for himself for life, and after his decease for B. (an illegitimate daughter.) The instrument reserved to A. a power of revocation by deed or will. By will dated April 16, 1813, A. confirmed the deed, except as to certain particulars, in which he specified and appointed the same persons as were trustees in the deed, executors. A. did not part with the stock, or part with the possession of the assigned property, or even communicate to the trustees the existence of the deed, which he retained in his own custody. The question was, whether the property assigned by it was liable to legacy duty; and three of the Barons of the Exchequer decided in the affirmative, contrary to the opinion of Baron Wood, who, with all due deference to the other learned barons, was the only one of them who seemed to take a correct view of the case. The judgment is too long for insertion here, but the circumstances which guided it seem to be, 1. The circumstance of the consideration being nominal. 2. That the trust for the grantor was not to receive the dividends merely, but implied a power in him to dispose of the property as he should think proper. 3. That he kept the deed in his own possession; never transferred the stock, nor invested them with the control of the property, or even informed

* The property above enumerated, in italics, was incapable of passing by deed, which is only capable of comprehending such property as the settlor is possessed of at the time of making the settlement.

No. VI.

*Voluntary
Settlement, by
which Estate is
conveyed to
Trustees
to such Uses as
Settlor shall
appoint.*

2. WHEREAS the said (*settlor*) is desirous of settling all his real and personal estate and effects, specified and set forth in the schedule hereunto annexed, in manner hereinafter appearing.

3. NOW THIS INDENTURE WITNESSETH, that for carrying such

Recital that
settlor is
desirous of
settling the
property.
Testatum.

them of it. 4. That though the legal estate was in the trustees, the actual ownership remained with the grantor. 5. That the deed professed to grant the property of which the maker should be possessed at the time of his decease, which otherwise than as a will it could not do. 6. That it contained a power of revocation by the most informal instruments; and lastly, that the will, by referring to and confirming the deed, threw a testamentary character over the whole.

Observations
upon Attorney-
General v. Jones.

Now with respect to the first circumstance of the consideration being merely nominal, that, instead of conferring a testamentary character on the instrument, discloses a directly contrary intention, it being inconsistent with a will to mention any consideration whatever, though it is rarely omitted in a deed, and in most instances forms one of its inseparable properties. All that can be inferred from it is, that the deed is made upon a voluntary, and not upon a good or valuable, consideration. Neither, as a learned writer on this subject remarks (see 1 Jarm. on Wills, 17), do the arguments founded upon the retention of the deed and the possession of the property appear to be more convincing, for though these circumstances are very often important when the claims of creditors and purchasers are under consideration, yet it has never been ruled that, in order to render a settlement binding on a settlor's own representatives, the deed must be disclosed, and the possession of the property relinquished by him. Nor can we see how, upon any legal principle, it could have been held that no estate passed upon which the deed was to operate in the settlor's lifetime, when in point of fact the whole legal estate, all the estate that a court of law could recognise, actually passed out of the settlor, and became instantly vested in the trustees. In case of the settlor being ousted from the property, the trustees alone could have brought ejectment for the recovery of it, and in point of fact, upon their legal title only they might have entered upon and ejected the very settlor himself. Was there ever a case, as Mr. Baron Wood aptly remarked, where an estate passed by a will in the lifetime of the testator, and yet here the whole legal estate actually passed in the settlor's lifetime. As to the circumstance of the settlor intending to include the whole of the property he might be possessed of at his death, that only tends to show that he wished to include more than the deed was capable of embracing, and not that he meant to resort to another mode of disposition. Nor does the mere fact of referring to the deed by the will afford any inference of a design to throw a testamentary character over the whole course of proceeding: for how often do testators refer to, for the purpose of confirming, some antecedent disposition of property by deed. And with respect to the power of revocation, the insertion of such a clause, so far from indicating an intention to make a will, discloses a totally different intention, for a will being of an ambulatory nature, no clause of revocation is necessary to render it revocable, whereas such a clause is absolutely necessary to render a deed so. "Suppose," as Mr. Baron Wood remarked, "there had been no power of revocation, would it not have been valid as a deed? and suppose in that case the party had made a will, disposing of the property differently, that will would not avail against the deed; but the deed, notwithstanding the alteration of the will, if he had not reserved the power, would prevail against the will. That shows it is a deed. If, on the other hand, he had made a will, and then another, the second would have been a revocation of the first." And, in a more recent case (*Tompson v. Browne*, 3 Myl. & Kee), Lord Cottenham, then Sir C. C. Pepys, M. R., alluding to the above-mentioned case of *Attorney-General v. Jones*, observed, "that if there be

his desire into effect, and also in consideration of the sum of 10s., paid to him by the said (*trustees*), the receipt of which is hereby acknowledged, HE, the said (*settlor*), DOTH by these presents, according to the respective natures and qualities of the premises, grant, release, assign and confirm, unto the said (*trustees*), their

No. VI.
Voluntary
Settlement, by
which Estate is
conveyed to
Trustees,
to such Uses as
Settlor shall
appoint.

anything in that decision to support the notion that where a person by deed settles property to his own use during his life, and after his decease for the benefit of other persons, a power of revocation reserved in such deed alters the character of the instrument and renders it testamentary, and consequently subject to legacy duty. I can only say, that if this were law, a great number of transactions, of which the validity has never been doubted, would be liable to be impeached."

In the case last referred to (*Tompson v. Browne*), by indenture of settlement dated August 19, 1823, made between A. of the first part, B. of the second part, C. and D., natural daughters of A. and B., of the third part, and E. and F. of the fourth part; after reciting that A. was desirous of making some provision for their children C. and D., and had therefore lately transferred into the joint names of E. and F. the sum of 6,090*l.*, new Four per Cent. Bank Annuities, it was then witnessed, that E. and F. and the survivor, &c., should stand possessed of the said stock, upon trust to permit A. or his assigns to receive the dividends during his life; and after his decease, upon trust to appropriate so much of the stock as would produce 50*l.* per annum, and pay the dividends thereof to B. for her life; and as to the residue of the stock, and also, after the decease of B., as to the appropriated fund, upon trust to transfer the same to C. and D. in equal shares at the age of twenty-five or marriage. The settlement contained a power to A. to revoke the trusts and appoint any others in lieu thereof. A. and B. being both dead, the *cestuis que trust* claimed a transfer of the fund; and the question raised by the trustees, was, whether the instrument was not testamentary, and the fund accordingly liable to legacy duty. The affirmative was attempted to be maintained on the authority of *Attorney-General v. Jones*, but the Master of the Rolls held that the legacy duty did not attach.

Tompson v.
Browne.

His Honour also said, the decision in that case seemed to have proceeded upon the ground that, under the circumstances, nothing passed from the maker of the instrument, so as to entitle any other person to interfere with his property in his lifetime. That conclusion was not, as we have already noticed, warranted by the facts; for (at any rate as far as the leasehold property was concerned), the whole of the legal estate of the settlor, as we have already noticed, actually did pass out of him, and became vested in the trustees, leaving him no legal right of interference whatever with the property.

But although *Attorney-General v. Jones*, is not a case that is likely to be followed, considerable caution should be observed in preparing voluntary settlements, to prevent, if possible, any questions from being raised as to their testamentary operation; for, to say the least of it, even to be a successful party at the suit of the Crown in any procedure in the Court of Exchequer upon matters connected with the revenue, is a very grievous misfortune.

If the subject-matter of the settlement consists of freehold and leasehold property, it will be advisable to convey the whole legal estate in the trustees, so that the instrument may have a present operation by passing all the estate of the settlor and vesting it in his trustees. If it consists of mortgages or securities for money, there should be powers of investing and varying securities during the settlor's lifetime. In settlements in favour of a wife and children, as a matter of still further safety, it may be advisable to make some provision, either in the shape of pin-money or otherwise, no matter how small the amount, to take effect immediately, so as to be an effectual answer to any questions as to the immediate operation of the settlement. For, if any part of the instrument operates as a settlement, the whole must do so, for the same instrument can

Practical
suggestions as
to framing deeds
of settlement.

No. VI.

**Voluntary
Settlement, by
which Estate is
conveyed to
Trustees,
to such Uses as
Settlor shall
appoint.*

heirs, executors, administrators and assigns, all and singular the freehold and leasehold messuages, lands, tenements and hereditaments; and also all the household furniture, goods, chattels and effects, specified and set forth in the schedule hereunto annexed; (b) AND all the estate, right, title and interest, both legal and equitable, of him the said (*settlor*) therein.

Habendum.

4. TO HOLD the same, with all and singular the privileges and appurtenances thereunto belonging, unto and to the use of the said (*trustees*) their heirs, executors, administrators and assigns, (c) according to the respective natures and qualities of the said premises, upon the trusts, and for the ends, intents and purposes hereinafter limited, expressed and declared; (that is to say,)

Power of
appointment.

5. UPON TRUST for such person or persons, and for such estate

never operate both as a deed and a will. And, since the decision in *Tompson v. Browne*, there seems to be no objection to the insertion of a power of revocation, but perhaps the safer plan, as in the above form, would be to reserve a general power of appointment, the limitations in the settlement being only to take effect so far as such power shall remain unexercised. Care also should be taken to follow the usual language of a deed, carefully avoiding any phraseology that is more applicable to a will, though that alone, if the deed is valid in other respects, will not have the effect of imparting a testamentary character to it: (1 Jarm. Wills, 20; *King's Proctor v. Daines*, 3 Hag. 218.)

When a schedule or inventory should accompany a deed of settlement. Schedule or inventory, if indorsed on deed, counted in the folios in the same manner as it actually embodied within it.

Distinction as to stamp duties where a schedule is annexed to an instrument or merely referred to in it.

Practical observations.

(b) As a deed of settlement is only capable of comprehending such property as the settlor is possessed of at the time of execution, it will be proper, in all cases where the articles intended to be comprised within it are of a fluctuating nature, to have a schedule or inventory, either annexed to or referred to by such settlement. If such inventory be annexed to or indorsed upon the deed it will be construed as forming part of it, in precisely the same manner as if actually embodied within it, and be chargeable with any progressive duty which any additional matter added to the previous contents of the instrument would render it liable to. It must, however, be borne in mind that these progressive duties are now considerably lessened by the new Stamp Act (13 & 14 Vict. c. 97, schedule Progressive Duties.) By this recent enactment, where the deed or instrument shall be chargeable with an *ad valorem* stamp or duties not exceeding in the whole the sum of 10s., the progressive duty is made equal to the amount of such *ad valorem* duty or duties; and in every other case (*except where any other progressive duty is expressly charged thereon*) a further *progressive* duty of 10s.

When the schedule or inventory is not annexed to the deed, but merely referred to in it, and such deed is chargeable only with a duty not exceeding 10s., exclusive of stamp duty, then such schedule shall be chargeable with the same duty, exclusive of progressive duty, as shall be chargeable upon such deed, &c. And where the *ad valorem* duty shall exceed 10s., then with a duty of 10s., and a further progressive duty of the same amount as the duty hereinbefore charged thereon respectively.

(c) It is deemed advisable to vest the legal estate in the trustees to set all questions at rest as to no estate passing from the settlor during his life.

or estates, interest or interests, and in such parts, shares or proportions, and with, under and subject to such powers, provisoes, charges, declarations and agreements, and in such manner, as the said (*settlor*) shall from time to time or at any time by deed or will appoint; and in default of and until such appointment, and so far as any such appointment, if incomplete, shall not extend, (*d*)

No. VI.
—
Voluntary Settlement, by which Estate is conveyed to Trustees, and to such Uses as Settlor shall appoint.
—

6. UPON TRUST to permit and suffer the said (*settlor*) and his assigns to hold and enjoy all and singular the said freehold and leasehold premises (excepting the leasehold messuage and premises being No. 5 in — Street in — as described in the schedule hereunto annexed, and now in the occupation of Mrs. D. S.), or to permit and suffer the said (*settlor*) and his assigns to receive and take the rents, issues and profits thereof, for and during the term of his natural life, and as to the said freehold premises without impeachment of waste, and also to permit and suffer the said (*settlor*) and his assigns to have the use and enjoyment of all and singular the said household furniture, goods, chattels and effects, specified and set forth in the said schedule (excepting the household furniture and effects contained in the said leasehold messuage and premises hereinbefore excepted, and as are so described in the said schedule), for the term of his natural life.

Upon trust to permit settlor to receive rents and profits, and to enjoy personal estate for life, excepting a leasehold messuage and furniture there excepted.

7. AND as to the said messuage and premises so excepted as aforesaid, UPON TRUST to permit the said (*D. S.*) to have the use and occupation thereof, and also the free use and enjoyment of all the said household furniture and effects therein contained, during the remainder of the natural life of the said (*settlor*), and after his decease,

Leasehold messuage and furniture to be in trust for present occupant.

8. UPON TRUST that the said (*trustees*) or the survivor of them, his heirs, executors or administrators, or other the trustees or trustee for the time being of these presents, do and shall, as soon as conveniently may be thereafter, make sale and absolutely

Power of sale.

(*d*) It must be remembered, that as the legal estate is executed in the trustees of the settlement, the settlor, by exercising the above power of appointment, can only confer an equitable estate.

Practical remarks.

No. VI.

*Voluntary
Settlement, by
which Estate is
conveyed to
Trustees
to such Uses as
Settlor shall
appoint.*

Power of sale.

dispose of all and singular the freehold and leasehold messuages, lands, tenements and hereditaments, and also of all the household furniture, goods, chattels and effects, specified and set forth in the schedule hereunto annexed, by public auction or private contract, either together or in parcels, and at one time or at several times, for such price as can reasonably be procured for the same, with power to buy in and re-sell the same at any future sale or sales, without being responsible for any loss that may be thereby incurred, and also to enter into all such contracts, stipulations, assignments and assurances as may be deemed expedient for the purpose of perfecting such sale or sales.

Declaration that
trustees shall
stand possessed
of purchase-
moneys.

9. AND IT IS HEREBY DECLARED, that the said (*trustees*) and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, do and shall stand and be possessed of the purchase moneys to arise from such sale or sales, upon the trusts following; (that is to say,)

Upon trust to
pay debts and
funeral
expenses, and
upon trust to
pay certain
specified sums.

10. UPON TRUST in the first place to pay, satisfy and discharge all such debts as shall be due and owing from the said (*settlor*) to any person or persons whomsoever; and also to defray all such costs, charges and expenses, as may be incurred in or about the funeral of the said (*settlor*), or in relation thereto; all of which proceedings shall be conducted in such manner as the said trustees or trustee for the time being shall in their or his discretion think proper or expedient; and after such payment and satisfaction as aforesaid, UPON TRUST to pay unto the several persons next hereinafter named, or such of them as shall happen to be living at the time of the decease of the said (*settlor*) the following sums of money without deduction, viz.,

To A. the sum of 100*l.* sterling.

To B. the sum of 75*l.* sterling.

To C. the sum of 75*l.* sterling.

To D. the sum of 50*l.* sterling;

and to E. the sum of 25*l.* sterling.

Proviso that in
case of the
death of either
of the parties
in settlor's life-

11. PROVIDED ALWAYS, that in case any of the said persons lastly hereinbefore named shall happen to die in the lifetime of the said (*settlor*), then the sums so given upon trusts to be paid to them

as aforesaid shall form a portion of the surplus of the trust moneys hereinafter mentioned, and be held upon and for the same trusts as are hereinafter declared of and concerning the same;

No. VI.

Voluntary Settlement, by which Estate is conveyed to Trustees, to such Uses as Settlor shall appoint.

12. AND IT IS HEREBY FURTHER DECLARED, that the said trustees or trustee for the time being of these presents do and shall lay out and invest in real or government securities, or in some of the public stocks or funds, and with full power to vary securities, a sufficient portion of the said trust moneys, so as that the dividends, interest or annual produce thereof shall amount to the annual sum of 150*l.*, and do and shall on the first Tuesday in every month pay a proportionate part of such dividends, interest or annual produce, into the proper hands of (*D. S.*), of, &c., for the term of her natural life, for her sole and separate use, free from the control, debts or engagements of any husband or husbands with whom she may at any time intermarry, and so that she shall have no power to alien or anticipate the growing payments thereof, her receipts alone being a sufficient discharge for the same; the first monthly payment to become due within one month after the decease of the said (*settlor*), and such monthly payments to be made as soon as possibly may be thereafter; and after her decease, then as to the said trust moneys, stocks, funds and securities, upon such and the same trusts as are hereinafter declared of and concerning the surplus of the said trust moneys; (that is to say),

*time, the gift to the party so dying shall fall into the surplus. Declaration that trustees shall invest sufficient moneys to produce the annual sum of 150*l.* and pay the same to *D. S.* by monthly instalments for her separate use for life.*

13. AND AS TO, FOR AND CONCERNING all the surplus of the said purchase moneys, trust moneys and premises, UPON TRUST for (*B. S.*), (*C. S.*), (*D. S.*), (*E. S.*), (*F. S.*), (*G. S.*), and (*H. S.*), the natural children and sons and daughters of the said (*settlor*) by the said (*D. S.*), in equal shares as tenants in common; the shares of such of the said children as shall be sons to be paid or transferred to them at their respective ages of twenty-one years; and the shares of such of the said children as shall be daughters to be paid or transferred to them at their respective ages of twenty-one years or days of marriage.

And as to the surplus moneys, upon trust for settlor's seven natural children in equal shares, &c.

14. AND in case any or either of the above-mentioned children being a son or sons shall die under the age of twenty-one years,

Provisions of survivorship and accretion.

No. VI.

*Voluntary
Settlement, by
which Estate is
conveyed to
Trustees,
to such Uses as
Settlor shall
appoint.*

or being a daughter or daughters, shall die under that age or unmarried, then as well the original share or respective shares of the aforesaid trust moneys, as also the shares or share thereof which may accrue to him, her or them under this cross executory trust, shall be and enure UPON TRUST for the survivors or survivor or other or others of such children, to be equally divided between them, if more than one, and to be paid or transferred at the same time as their original shares in the said trust moneys and premises.^(e) [INSERT *provisions for maintenance and powers of advancement, ut ante*, No. V., clauses 11 and 12, p. 786.]

To invest
trust moneys,
with power
of varying
securities.

15. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED AND AGREED, that it shall be lawful for the trustees or trustee for the time being of these presents, at any time after the exercise of the aforesaid trusts for sale, and before all, any or either of the respective shares of the said children shall become so payable or transferable as aforesaid, to lay out and invest that portion of the said trust moneys in the Bank of England or Government securities, or in or upon some of the public stocks or funds, or upon mortgage of good and sufficient freehold, leasehold or copyhold estate, to be situate in England or Wales, but not in Ireland, which said stocks, funds and securities it shall be lawful for the said trustees or trustee from time to time to alter, vary and transpose as they or he shall in their or his discretion think fit.

Ultimate trust
for settlor's
next-of-kin.

16. PROVIDED ALWAYS, that in case all the above-mentioned children shall die in the lifetime of the said (*settlor*), or before their respective shares in the said trust moneys shall become payable or transferable, then and in such case, the trustees or trustee for the time being of these presents shall stand and be possessed of the said trust moneys and premises, UPON TRUST

Practical
observations.

(e) The clause of survivorship and accruer is particularly necessary in a deed prepared under the present circumstances, because the parties beneficially interested being natural children (although brothers and sisters by the same father and mother) are incapable of transmitting property to each other, which on the decease of either of them would go to the Crown. A mode of visiting the sins of the fathers upon the children not altogether worthy of the liberal and enlightened spirit of the age in which we live.

for the person or persons who for the time being would be entitled to the personal estate of the said (*settlor*) as his next-of-kin under the Statute of Distribution. (*f*) [ADD *power for trustees to give receipts, ut ante*, No. III., clause 19, p. 700. ALSO *power to change trustees, ut ante*, Section II., No. I., clause 45, p. 684.]

No. VI.
*Voluntary
 Settlement, by
 which Estate is
 conveyed to
 Trustees,
 to such Uses as
 Settlor shall
 appoint.*

IN WITNESS, &c.

THE SCHEDULE TO WHICH THE ABOVE-WRITTEN INDENTURE
 REFERS. [*Here insert Schedule.*]

(*f*) In the absence of a clause of this kind, the property, upon the death of Practical the children before the time of payment, would become vested in the Crown. remarks. As to which see *ante*, note (*e*).

SECTION IV.

SEPARATION DEEDS. (a)

No. I.—DEED OF SEPARATION BETWEEN A HUSBAND AND WIFE, THE HUSBAND COVENANTING TO PAY AN ANNUITY UPON TRUSTS FOR THE BENEFIT OF HIS WIFE DURING THEIR JOINT LIVES; THE WIFE BEING ALLOWED TO RETAIN HER WEARING APPAREL AND OTHER ARTICLES REPUTED TO BELONG TO HER

No. II.—DEED OF SEPARATION BETWEEN A HUSBAND AND WIFE, THE LATTER BEING ALLOWED TO RETAIN HER WEARING APPAREL, ORNAMENTS OF THE PERSON, AND OTHER ARTICLES REPUTED TO BELONG TO HER; AN ANNUITY CHARGED ON REAL ESTATE BEING ALSO SECURED TO HER SEPARATE USE.

No. III.—DEED OF SEPARATION BETWEEN HUSBAND AND WIFE, BY WHICH WIFE IS TO BE PERMITTED TO OCCUPY A LEASEHOLD DWELLING-HOUSE, AND TO HAVE THE USE OF THE FURNITURE DURING HER LIFETIME. STOCK IN THE 3*l.* PER CENT. CONSOLS TRANSFERRED INTO THE NAME OF A TRUSTEE TO BE HELD UPON TRUST TO PAY THE DIVIDENDS TO THE SEPARATE USE OF WIFE FOR LIFE, AND AFTER HER DECEASE UPON TRUST FOR SUCH PERSONS AS HUSBAND SHALL APPOINT.

Practical
observations.

(a) Deeds of separation have been looked upon with an unfavourable eye by the courts, both of law and equity, as being contrary to the policy of the law which fixes the duties of domestic life (*Beard v. Webb*, 2 Bos. & Pull. 93; *St. John v. St. John*, 11 Ves. 531; *Westmeath v. Westmeath*, Jac. 126; *Durant v. Durant*, 1 Hag. 760; *Mortimer v. Mortimer*, 2 *ib.* 318); but courts of law (*Lee v. Thurlow*, 2 B. & C. 547) and also courts of equity (*Elworthy v. Bird*, 2 Sim. & Stu. 372; Jac. 1431) have nevertheless decided in favour of the validity of settlements of this nature (*Ross v. Willoughby*, 10 Pri. 1; *Bateman v. Ross*, 1 Dow. 235.) The Ecclesiastical Courts, however, will not uphold such an arrangement, or recognise a contract for future separation to be binding, as this would be to establish a peculiar and anomalous species of divorce. On this account, therefore, it seems that such a deed could not be pleaded in bar in a suit in the Ecclesiastical Courts for a restitution of conjugal rights: (*St. John v. St. John*, *sup.*) Still, if a husband should so proceed, in opposition to his agreement not to do so, a court of equity would restrain him by injunction (1 Jac. 140); although it would be otherwise if the wife were to sue the husband, as she can neither enter into a contract, or execute a deed (*St. John v. St. John*, *sup.*); the husband's only remedy in such a case is to proceed against the trustees upon a covenant (*Durant v. Durant*, *sup.*) that the wife shall not disturb the settlement.

In cases of the latter description, therefore, a covenant of this nature from the

No. IV.—DEED OF SEPARATION BETWEEN HUSBAND AND WIFE, WHERE THE HUSBAND SETTLES A SUM OF MONEY UPON TRUST FOR INVESTMENT IN FAVOUR OF HIS WIFE AND CHILDREN, HE BEING INDEMNIFIED AGAINST HER DEBTS, AND ANY CLAIMS SHE MAY MAKE UPON HIM.

No. V.—DEED OF SEPARATION BETWEEN HUSBAND AND WIFE, BY WHICH IT IS ARRANGED THAT TWO-THIRDS OF DIVIDENDS OF STOCK TO WHICH THEY ARE ENTITLED UNDER THEIR MARRIAGE SETTLEMENT SHALL, DURING THEIR JOINT LIVES, BE PAID TO THE HUSBAND; THE REMAINING THIRD TO BE PAID TO THE WIFE FOR HER SEPARATE USE.

No. VI.—DEED OF SEPARATION BETWEEN HUSBAND AND WIFE, BY WHICH IT IS ARRANGED THAT HUSBAND IS TO RECEIVE AN ANNUITY OF 400*l.* DURING THEIR JOINT LIVES, SO LONG AS THEY SHALL JOINTLY LIVE, AND HE SHALL CEASE TO MOLEST HER.

trustees should always be inserted; as also a covenant to indemnify the husband against any debts the wife may contract during the time of separation for her support and maintenance, which covenant of indemnity will be considered as a valuable consideration, and thus render the deed valid, both as against creditors and subsequent purchasers: (*Stevens v. Oliver*, 2 Bro. C. C. 90; *King v. Brewer*, *ib.* 93; *Compton v. Collinson*, 2 *ib.* 386; S. C., 9 East, 59; *Fitzler v. Fitzler*, 2 Atk. 511; *Worrall v. Jacob*, 2 Mer. 255.) But, in the absence of such covenant of indemnity, or other sufficient or valuable consideration, the deed of settlement will be considered on the same footing as any deed of voluntary settlement, and as such liable to be avoided by either creditors or subsequent purchasers: (*Fitzler v. Fitzler*, *sup.*; *Legard v. Johnson*, 3 Ves. 361.) Still it has been held that where the husband's conduct has been such as to afford sufficient ground for a sentence of alimony in the spiritual court, it will also afford a sufficient consideration to support a deed of settlement for a separate maintenance (*Hobbs v. Hull*, 1 Cox, 445; *Nunn v. Wilsmore*, 8 T. R. 529); but the correctness of these decisions has been questioned: first, on account of the incompetency of the wife to enter into any agreement, so as effectually to accept the voluntary provision offered by the husband (*Fitzler v. Fitzler*, *sup.*); and, secondly, that a decree for alimony only affects the husband's person, and does not withdraw his estate from his creditors: (*St. John v. St. John*, 5 Ves. 533.)

A deed of separation is put an end to by a reconciliation of the parties, and the husband and wife either living together again, or the wife being again maintained by the husband, as the object of the deed is no longer existing: (*Fletcher v. Fletcher*, 2 Cox, 99; *Bateman v. Ross*, 1 Dow. 235.) And it seems that the same effect would be produced if a return to cohabitation was compelled by the sentence of the Ecclesiastical Courts; and it appears that even a direction under such sentence, whether obeyed or not, will prevent the operation of the deed so far as to prevent its being enforced in favour of the disobedient party: (2 Roper's Husband and Wife, 273, note, 2nd edition; and see 2 Cox, 107.) It has, however, been decided that where it is expressly provided that the separate maintenance should continue until the parties should agree to cohabit and live together again, to be testified by some writing under their hands, that future cohabitation, without such an agreement in writing, did not determine the settlement: (*Gawdon v. Draper*, 2 Ventr. 217.)

A deed of settlement providing for the separate maintenance of a wife whenever she should be living apart from her husband, allowing her to separate from him at pleasure, was holden to be void (*Tittle v. Durand*, 7 Price, 577); but it seems that a provision for future separation, which is made dependant on the approbation of trustees will be supported, as in a case where a deed was made as an inducement to a reconciliation after some differences had arisen, and it provided for the separate maintenance of the wife only in the event of a future separation with the approbation of the trustees.

Deed of separation avoided by a reconciliation or other acts of the parties.

A deed allowing separation at pleasure void.

No. VII.—DEED OF SETTLEMENT BY WHICH A GENTLEMAN, UPON SEPARATING FROM HIS KEPT MISTRESS, SETTLES AN ANNUITY UPON HER, PAYABLE MONTHLY, SO LONG AS SHE SHALL REMAIN UNMARRIED, UPON CONDITION OF HER QUITTING THE NEIGHBOURHOOD.

No. VIII.—DEED OF SETTLEMENT, BY WHICH SETTLOR CONVEYS REAL ESTATES TO TRUSTEES IN FEE, UPON TRUST TO RAISE OUT OF THE RENTS AND PROFITS AN ANNUITY OF 150*l.* FOR A LADY WITH WHOM HE HAS COHABITED, BUT IS NOW ABOUT TO SEPARATE, FOR HER LIFE, AND TO INVEST THE RESIDUE OF THE RENTS AND PROFITS TO ACCUMULATE AT COMPOUND INTEREST DURING HER LIFE, AND, AFTER HER DECEASE, TO SELL THE REAL ESTATES AND DIVIDE THE PROCEEDS, AS ALSO THE INVESTED SURPLUS RENTS AMONGST THE FOUR NATURAL CHILDREN OF THE SETTLOR BY THE LADY. PROVISO, THAT THE ANNUITY SHALL CEASE IN CASE SHE SHALL ATTEMPT TO ANTICIPATE THE GROWING PAYMENTS, AND THAT, IN CASE OF HER MARRIAGE, THE ANNUITY SHALL BECOME PAYABLE TO HER SEPARATE USE.

No. IX.—BOND GIVEN BY TRUSTEES TO SECURE AN ANNUITY TO A KEPT MISTRESS UPON A SEPARATION, SO LONG AS SHE SHALL REMAIN SINGLE, AND SHALL ABSENT HERSELF FROM THE NEIGHBOURHOOD OF THE OBLIGOR'S RESIDENCE, AND SHALL NOT ATTEMPT TO ANTICIPATE THE GROWING PAYMENTS OF THE ANNUITY.

No. X.—FORM OF BOND GIVEN TO A KEPT MISTRESS ON SEPARATION, TO SECURE HER AN ANNUITY OF 100*l.* PAYABLE QUARTERLY, AND IN CASE OF HER MARRIAGE TO BE TO HER SEPARATE USE, AND TO CEASE IN CASE OF HER ATTEMPTING TO ANTICIPATE THE GROWING PAYMENTS.

No. I.

DEED OF SEPARATION BETWEEN A HUSBAND AND WIFE
THE HUSBAND COVENANTING TO PAY AN ANNUITY UPON
TRUST FOR THE BENEFIT OF HIS WIFE, DURING THEIR
JOINT LIVES, THE WIFE BEING ALLOWED TO RETAIN
HER WEARING APPAREL AND OTHER ARTICLES REPUTED
TO BELONG TO HER.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of agreement to live separate. 3. Testatum, by which husband covenants that wife shall live separate from him. 4. That wife may hold and possess her clothes, jewels, and other paraphernalia for her separate use, and dispose of the same as if she was sole. 5. That all real and personal estate acquired by wife during her coverture shall be held and disposed of as she may think proper. 6. That husband will do all necessary acts for confirming settlement. 7. Further testatum, by which husband covenants to pay an annual sum to trustees during the joint lives of himself and wife. 8. Declaration of trust of annuity for the separate use of wife. 9. Covenant by wife's trustees to indemnify husband against her debts. | <ol style="list-style-type: none"> 10. That wife shall not institute proceedings to compel husband to cohabit with her. 11. That wife, on request, will release her title to dower, free-bench, and thirds. <p style="text-align: center;">—</p> <p style="text-align: center;"><i>Additional Clauses.</i></p> <ol style="list-style-type: none"> A. Covenant from husband to execute all assurances that may be required for conveying any after-acquired real estate, and also to release all claims to which he may become entitled as tenant by the curtesy. B. That in case of wife's death in husband's lifetime, he will not claim any estate to which he may become entitled as tenant by the curtesy. C. Covenant by husband that, on breach of covenant, he will pay a specified sum as liquidated damages. D. Proviso that on nonpayment of any part of the annuity for six months, the covenants entered into by the trustees shall become void. |
|---|--|

1. THIS INDENTURE, made the day of A.D. 18 , Parties.
BETWEEN (*husband*) of &c. of the first part, (*Christian name*),
the wife of the said (*husband*) of the second part, and (*two*
trustees), of &c. of the third part.

No. I.

*Deed of
Separation,
between
Husband and
Wife; Husband
covenanting to
pay Annuity
upon trust for
the benefit of
Wife, during
their joint lives,
&c.*

Recital of
agreement to
live separate.

Testatum by
which husband
covenants that
wife shall live
separate from
him.

2. WHEREAS certain unhappy differences have arisen, and still exist between the said (*husband*) and (*wife*), in consequence of which they have agreed to live separate and apart from each other, upon the terms and conditions hereinafter mentioned.

3. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement on the part of the said (*husband*), HE the said (*husband*), doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with the said (*trustees*), their executors, administrators and assigns, in the manner following; (that is to say,) that notwithstanding the marriage which hath been had and solemnized between the said (*husband*) and (*Christian name*) his wife, it shall be lawful for her the said (*wife*), from henceforth and at all times hereafter, to live separate and apart from the said (*husband*), in the same manner as if she was sole and unmarried, in any part of Great Britain, or in any other country she may think proper, in such way as she may think fit, and that the said (*husband*) will not compel her to cohabit or live with him by any ecclesiastical censure, or any other proceedings whatsoever; AND ALSO that she the said (*wife*) shall be absolutely free from all command, restraint or authority of the said (*husband*), who shall not from henceforth, under any pretence whatsoever, prosecute any person or persons for harbouring, protecting, or assisting the said (*wife*), or in any way interfere or disturb her in her way of living, or in her liberty of going, remaining in or returning from such place or places as she may think proper.

That wife may
hold and possess
her clothes,
jewels, and other
paraphernalia
for her separate
use, and dispose
of the same as
if she was sole.

4. AND ALSO that it shall be lawful for the said (*wife*) from henceforth to have and enjoy for her own separate and absolute use, and notwithstanding her coverture, all such jewels, plate, clothes, linen, wearing apparel, ornaments, articles, and things whatsoever as now are, or which at any time or times hereafter shall be reputed to belong to her, or which she shall secure from the provision hereby made for her separate use; with power to give and dispose of the same in such manner as she shall think fit, whether from hand to hand, or by deed or will; AND ALSO that in case the said (*wife*) shall happen to die during the lifetime of the said (*husband*), he the said (*husband*) will permit the last will of the said wife, or any writing purporting to be her last will, or any

codicil and codicils thereto, to be duly proved in the proper ecclesiastical court; or in case she shall die intestate, will permit administration to be taken out to her by her next-of-kin of her rights, credits and effects in the same manner as if she had been unmarried; and permit and suffer her said personal estate and effects, or so much thereof of which she shall die intestate, to be distributed amongst the persons between whom the same would have been distributable under the Statute for the Distribution of the Estate and Effects of Intestates, in case she had died unmarried.

No. 1.
Deed of
Separation,
between
Husband and
Wife; Husband
covenanting to
pay Annuity
upon trust for
the benefit of
Wife during
their joint lives,
&c.

5. AND ALSO that all such estates, real and personal, as shall at any time during the joint lives of the said (*husband*) and (*wife*) descend or devolve upon her, or upon the said (*husband*) in her right, or to which she or any other person under or in trust for her, or for her benefit, shall or may become seised, possessed of, or entitled to, shall be held and disposed of, conveyed, devised, or bequeathed by the said (*wife*), according to the several natures and qualities thereof respectively, as she may think proper, free from the debts, claims or control of the said (*husband*), in the same manner as if she was unmarried.

That all real and personal estate acquired by wife during her coverture shall be held and disposed of as she may think proper.

6. AND FURTHER, that he the said (*husband*) shall and will enter into, execute, and perfect all such assurances, for the more perfectly or satisfactorily corroborating and confirming these presents, and every clause, matter and thing herein contained, as the said (*trustees*), their executors, administrators and assigns, or his or their counsel in the law shall require. (*a*)

That husband will do all necessary acts for confirming the settlement.

7. AND THIS INDENTURE ALSO WITNESSETH, that in further

(*a*) If it is probable the wife will succeed to any real estate, over which she is to have the absolute power of disposal, it will be advisable to insert the following clause:—

A. AND ALSO that in case any real estate shall at any time during the joint lives of the said (*husband*) and (*wife*) happen to be given or devised unto, or in any way devolve upon, the said (*wife*), or

Covenant from husband to execute all assurances that may be

No. I.

*Deed of
Separation
between*

*Husband and
Wife; Husband
covenanting to
pay Annuity
upon trust for
the benefit of
Wife during
their joint lives,
&c.*

Further
testatum, by
which husband
covenants to
pay an annual
sum to trustees
during the
joint lives of
himself and
wife.

pursuance and performance of the said agreement on the part of the said (*husband*), HE the said (*husband*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*trustees*), their executors, administrators and assigns, that he the said (*husband*) shall and will, yearly and every year, during the joint lives of himself and the said (*wife*), pay unto the said (*trustees*) their executors, administrators or assigns, the yearly sum of 400*l.* sterling, by four equal quarterly payments, on the 24th day of June, on the 29th day of September, the 25th day of December, and the 25th day of March in every year, without deduction on account of taxes, or any other pretence whatsoever; the first quarterly payment thereof to be made the 24th day of June next ensuing; AND ALSO shall and will, in case the said (*wife*) shall happen to die in the lifetime of the said (*husband*), or on any other than one of the quarterly days of payment hereinbefore mentioned, pay unto the said (*trustees*), their executors, administrators or assigns, within one calendar month next after the decease of the said (*wife*), a proportionate part of the said yearly sum of 400*l.*, from the time which shall have elapsed between the quarterly day of payment immediately preceding the decease of the said (*wife*), and the day of such decease.

required for
conveying any
after-acquired
real estates of
wife.

upon the said (*husband*) and (*wife*) in right of the said (*wife*), THEN and in such case, and so often as the same shall happen, the said (*husband*) shall and will, at the request and costs of the said (*wife*), enter into, execute and perfect all such conveyances and assurances, for conveying, assuring and confirming the said real estate to such uses, upon such trusts, and for such ends, intents and purposes as the said (*wife*) shall, notwithstanding her coverture, by any deed or instrument in writing, or by her last will, or any codicil or codicils thereto, appoint, or as she or her counsel in the law, or any person or persons claiming under or by virtue of such appointment, shall require.

That in case of
wife's death in
husband's life-
time, he will
not claim any
estate to which

B. AND ALSO that if the said (*wife*) shall happen to die in the lifetime of the said (*husband*) before any such conveyance as aforesaid shall have been made, THEN and in such case the said (*husband*) will not claim any estate to which he may be entitled as tenant by the

8. AND IT IS HEREBY DECLARED, that the said (*trustees*) and the survivor of them, his executors, administrators and assigns, shall stand possessed of the said yearly sum of 400*l.*, so covenanted to be paid as aforesaid, UPON TRUST for the benefit of such person or persons, and for such ends, intents and purposes as the said (*wife*) shall from time to time, or at any time, notwithstanding her coverture, by any deed or deeds, writing or writings under her hand, appoint; but without power to alien or anticipate the growing payments thereof; and in default of such appointment, do and shall pay the same into the proper hands of the said (*wife*) for her sole and separate use, free from the debts, control or engagements of the said (*husband*), and to be applied for and towards her maintenance and support.

No. I.

Deed of Separation between Husband and Wife; Husband covenanting to pay Annuity upon trust for the benefit of Wife during their joint lives, &c.

Declaration of Trust of annuity for the separate use of wife.

9. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement on the part of the

Covenant by wife's trustees to indemnify

curtesy of England in any of the said hereditaments and premises of the said (*wife*), and shall and will, at the expense of the heir of the said (*wife*), release in favour of such heir, all the right and title of him the said (*husband*) in such estate as such tenant by the curtesy as aforesaid.*

he may become entitled as tenant by the curtesy.

* It is sometimes stipulated that in case the husband shall commit a breach of the above-mentioned covenants, that he shall pay the trustees a specified sum by way of liquidated damages, to be applied to the wife's benefit, in which case the following clause may be added to the above:—

Practical suggestions.

C. THAT if the said (*husband*) shall at any time hereafter infringe upon or act contrary to the covenants and agreements hereinbefore contained on his part to be observed and performed, or any of them, he the said (*husband*), his executors or administrators, will immediately thereupon pay unto the said (*trustees*) their executors, administrators or assigns, the sum of £ . . . sterling by way of liquidated damages, and not by way of penalty; to be held by the said (*trustees*), their executors, administrators and assigns, IN TRUST, and for the sole and separate use of the said (*wife*), and to be assigned and disposed of in such manner as she shall, notwithstanding her coverture, by deed, will, or other writing, appoint, in the same manner as if she was unmarried.

Covenant by husband that on breach of covenant he will pay a specified sum as liquidated damages.

No. I.

Deed of
Separation
between
Husband and
Wife; Husband
covenanting to
pay Annuity
upon trust for
the benefit of
Wife during
their joint lives,
&c.

husband against
her debts.

said (*trustees*), and in consideration of the covenants and agreements hereinbefore contained on the part of the said (*husband*) to be observed and performed, THEY the said (*trustees*) do hereby for themselves, their heirs, executors and administrators, jointly and severally covenant and agree with the said (*husband*), his heirs, executors, and administrators, in manner following (that is to say), that during all such time as the said (*husband*) and (*wife*) shall continue to live separate and apart from each other, the said (*husband*) shall not be in any way liable to pay for the maintenance, support, lodging, or clothing of the said (*wife*), or to pay any debt or debts which she hath already contracted, or shall or may at any time or times hereafter contract during the said separation; AND ALSO that the said (*trustees*), their heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, well and sufficiently protect, defend, save harmless and keep indemnified the said (*husband*), his heirs, executors and administrators, and his and their lands and tenements, goods and chattels, of, from and against all and every the debt or debts, sum or sums of money which the said (*wife*) hath contracted, or shall or may at any time hereafter during the said separation, contract with any person or persons whomsoever; and also of, from and against all actions, suits, claims and demands whatsoever, on account thereof; and also of, from and against all such costs, damages, and expenses as may be recovered against, sustained, or expended, or become payable by the said (*husband*), his heirs, executors or administrators, on account of any act or default already committed, done or suffered by the said (*wife*.)

That wife shall
not institute
proceedings to
compel husband
to cohabit with
her.

10. AND ALSO that she the said (*wife*), or any other person or persons on her behalf, shall not nor will at any time or times hereafter, commence or prosecute any suit or suits, or any other proceedings in any court or courts whatsoever, to compel the said (*husband*) to cohabit or live with the said (*wife*), or to allow her any support, maintenance, or alimony whatsoever.

That wife on
request will
release her title
to dower, free-
bench, and
thirds.

11. AND FURTHER, that she the said (*wife*), her executors or administrators, shall and will at any time hereafter, at the request and costs of the parties requiring the same, make, do, acknowledge, enter into, execute and perfect all such acts and assurances, for

releasing, relinquishing, and extinguishing all the right, title, claim and demand whatsoever, which she the said (*wife*), her executors or administrators, shall or may have or be entitled to in respect of any dower, free-bench, thirds, or other customary estate or interest to which the said (*wife*) may at any time hereafter become entitled to by common law, custom or otherwise in the freehold, copyhold, leasehold, and other the estate and effects, whether real or personal, of which the said (*husband*) now is, or at any time or times hereafter during the life of the said (*wife*), may be seised, possessed of, or entitled to, as the said (*husband*), his heirs, executors, administrators or assigns, or his or their counsel in the law, shall require, and as shall be tendered to be done and executed. (b) [ADD power to change trustees, *ut ante*, Section II., No. IV., clause 16, p. 706.]

No. I.
—
Deed of Separation between Husband and Wife; Husband covenanting to pay Annuity upon trust for the benefit of Wife during their joint lives, &c.
—

IN WITNESS, &c.

(b) A proviso for payment of liquidated damages by the trustees to the husband in case of breach of the terms of the separation deed by the wife, may, if desirable, be inserted here, merely altering the clause, *ut ante*, p. 805, C., by substituting the name of the *husband* in the place of the trustees.

Practical observations.

It is sometimes provided that, unless the annuity is punctually paid, the trustees shall be released from their covenants. For this purpose the following clause may be employed :—

D. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that in case any quarterly payment of the said yearly sum of 400*l.* hereby secured shall be in arrear and unpaid for the space of six calendar months after any of the days hereinbefore appointed for payment thereof (being demanded), THEN and immediately after the expiration of the said space of six calendar months, the covenant hereinbefore contained on the part of the said (*trustees*), their executors, administrators and assigns, to be observed and performed, shall determine and be void.

Proviso that on nonpayment of any part of the annuity for six months the covenant entered into by the trustees shall become void.

No. II.

DEED OF SEPARATION BETWEEN A HUSBAND AND WIFE, THE LATTER BEING ALLOWED TO RETAIN HER WEARING APPAREL, ORNAMENTS OF THE PERSON, AND OTHER ARTICLES REPUTED TO BELONG TO HER; AN ANNUITY CHARGED ON REAL ESTATE BEING ALSO SECURED TO HER SEPARATE USE

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Testatum, by which husband grants annuity. 3. Habendum to trustees for 99 years, determinable on wife's decease. 4. Power of distress. 5. Power of entry. 6. Further testatum, by which husband demises premises charged with annuity. 7. Habendum to trustees for 500 years. 8. Trust to permit husband to receive the rents until the annuity shall be in arrear, and then by mortgage or sale to raise the same. | <ol style="list-style-type: none"> 9. Declaration of trusts of annuity. 10. Proviso that provision for wife shall be in satisfaction of her right to dower, thirds, &c. 11. Covenant from husband for payment of annuity. 12. That he has good right to charge the same on demised premises. 13. That premises shall remain charged with annuity. 14. Free from incumbrances. 15. For further assurance. |
|---|---|

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
 BETWEEN [INSERT name and description of parties, ut ante,
 No. I., clause 1, p. 801; AND THEN ADD recital of agreement to live
 separate; TESTATUM by which husband covenants to allow his wife
 to live separate, and possess her clothes and paraphernalia; AND
 THAT all property acquired by her shall be at her disposal, ut ante,
 ib., clauses 2 to 5 inclusive, pp. 802, 803.]

2. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance and performance of the said agreement on the part of the said (*husband*), and also in consideration of the sum of five shillings paid to him by the said (*trustees*) on the execution hereof, the receipt of which is hereby acknowledged; HE the said (*husband*), with the privity and approbation of the said (*wife*) (testified by her being a party hereto), DOTH by these presents grant and confirm unto the said (*trustees*), their executors, administrators and assigns, one annuity or annual rent-charge of £ sterling to be paid unto the said (*trustees*), their executors, administrators and assigns, for the term of ninety-nine years, if the said (*wife*) shall so long live, to be computed from the day of the date of these presents, to be charged upon, and yearly issuing and payable out of, ALL &c. [DESCRIBE *parcels charged with annuity.*]

No. II.

Deed of Separation between Husband and Wife, the latter being allowed to retain her Wearing Apparel, &c.

Testatum, by which husband grants annuity

3. TO HAVE, HOLD, RECEIVE AND TAKE the said annuity or yearly rent-charge of £ , unto the said (*trustees*), their executors, administrators and assigns, from henceforth for the term of ninety-nine years, if the said (*wife*) shall so long live, free from all taxes and deductions whatever (except the present or any future tax on property or income), by four equal quarterly payments, on the day of , the day of , the day of , and the day of , in every year, together with a proportionate part of the said annuity or yearly rent-charge for the time which shall elapse between the last of the said quarterly days of payment and the death of the said (*wife*); the first quarterly payment to be made on the day of next.

Habendum of trusts for ninety-nine years determinable on wife's decease.

4. AND the said (*husband*) doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with the said (*trustees*), their executors, administrators and assigns, that in case the said annuity or yearly rent-charge of £ , or any part thereof shall be in arrear and unpaid for the space of fourteen days next after any of the days whereon the same ought to be paid as aforesaid, THEN and in every such case, and so often as the same shall happen, it shall be lawful for the said (*trustees*), their executors, administrators and assigns, into and upon all and singular the said hereditaments and premises hereby charged with the said annuity or yearly rent-charge, to enter and distrain, and

Power of distress.

No. II.

*Deed of
Separation
between**Husband and
Wife, the latter
being allowed
to retain her
Wearing
Apparel, &c.*

to sell and dispose of the distress and distresses then and there taken, or otherwise to act therein according to due course of law, in like manner as in case of distresses taken for the nonpayment of rent reserved by lease or common demise; TO THE INTENT that thereby and therewith the said (*trustees*), their heirs, executors, administrators and assigns may be fully paid and satisfied the said annuity or yearly rent-charge of £ , and every part thereof, so in arrear and unpaid as aforesaid, and all costs and expenses occasioned by the nonpayment of the same.

Power of entry.

5. AND ALSO that in case the said annuity or yearly rent-charge of £ , or any part thereof, shall at any time or times hereafter be in arrear and unpaid for the space of thirty days next after any of the said days whereon the same ought to have been so paid as aforesaid, THEN and in such case, and as often as it shall so happen, it shall (although no formal or legal demand shall have been made thereof) be lawful for the said (*trustees*), their executors, administrators and assigns, into and upon all and singular the said hereditaments and premises hereby charged with the said annuity or yearly rent-charge, or into and upon any part thereof in the name of the whole to enter, and to receive and take the rents, issues and profits thereof, to and for their own use, until they shall therewith, or otherwise, be fully paid and satisfied the said annuity or yearly rent-charge of £ and every part thereof so in arrear as aforesaid; AND all such arrears of the same as shall grow due during their being in possession of the same premises, together with all such costs, damages and expenses, as they shall sustain by reason of the nonpayment thereof, such possession, when taken, to be without impeachment of waste.

Further testa-
tum by which
husband
demises pre-
mises charged
with annuity.

6. AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance and performance of the said agreement, and in consideration of the premises, HE the said (*husband*) DOTH by these premises grant, bargain, sell and demise, unto the said (*trustees*), their executors, administrators and assigns, ALL and singular the messuages, tenements, lands and premises hereinbefore described, and hereby charged with the payment of the said annuity or yearly rent-charge of £ as aforesaid, AND all rights, members and appurtenances thereunto belonging.

7. TO HAVE AND TO HOLD the said messuages, tenements, lands, and all and singular other the premises hereby demised, with their appurtenances (subject and chargeable with the said annuity or yearly rent-charge of £ hereby granted, and the powers and remedies hereinbefore given for securing the repayment of the same) unto the said (*trustees*), their executors, administrators and assigns, from henceforth, for and during and unto the full end and term of 500 years, without impeachment of waste, but upon the trusts, and for the ends, intents and purposes hereinafter declared; (that is to say,)

No. II.

*Deed of
Separation
between
Husband and
Wife, the latter
being allowed
to retain her
Wearing
Apparel, &c.*

*Habendum
to trustees for
500 years.*

8. UPON TRUST that the said (*trustees*), their executors, administrators and assigns, do and shall permit and suffer the said (*husband*), his heirs or assigns, to receive and take the rents, issues and profits of the said demised premises, until the said annuity or yearly rent-charge of £ or some part thereof shall be in arrear and unpaid for the space of forty days next after the same shall become due and payable. AND when and so often as the said annuity or yearly rent-charge of £ or any part thereof shall be in arrear and unpaid for the space of forty days next after the same shall become due and payable, do and shall (but subject and without prejudice as aforesaid) by and out of the rents, issues and profits of the said premises, or by demising, leasing, mortgaging, or absolutely selling the same premises or any part thereof respectively, for all or any part of the said term of 500 years, or by bringing any action or actions against the tenants or occupiers of the said premises for recovering the rents, issues and profits thereof then in arrear or by all, any or either of the ways and means aforesaid, or by such other ways and lawful means as to them shall seem expedient, levy and raise such sum and sums of money as they shall think proper, for the purpose of paying and satisfying unto the said (*trustees*), their executors, administrators and assigns, the said annuity or yearly rent-charge of £ , or such part thereof as shall be so in arrear and unpaid, and all costs and expenses occasioned by the nonpayment of the same; AND DO AND SHALL apply the moneys so to be levied and raised, or a competent part thereof, in satisfaction of the said arrears, costs and expenses, accordingly, and then pay over the surplus moneys (if any) unto the said (*husband*), his heirs, executors, administrators or assigns.

*Trust to permit
husband to
receive the rents
until the
annuity shall
be in arrear,
and then by
mortgage or
sale to raise the
same.*

No. II.

*Deed of
Separation
between
Husband and
Wife, the latter
being allowed
to retain her
Wearing
Apparel, &c.*

Declaration of
trusts of
annuity.

Proviso that
provision for
wife shall be in
satisfaction of
her right to
dower, thirds,
&c.

Covenant from
husband for
payment of
annuity.

That he has
good right to
charge the same
on demised
premises.

9. AND IT IS HEREBY DECLARED AND AGREED, by and between the said parties to these presents, that the said (*trustees*), their executors, administrators and assigns shall stand possessed of the said annuity or yearly rent-charge of £ [CONTINUE *declaration of trust of annuity for the separate use of wife, ut ante*, No. I., clause 8, p. 805. INSERT PROVISIO *for cesser of term, ut ante*, Section II., No. I., clause 29, p. 676.]

10. PROVIDED ALWAYS, and it is hereby further declared and agreed by and between the said parties to these presents, that the provision hereby made for the said (*wife*) shall be, and she doth hereby agree to accept the same, in lieu of all dower, thirds, or other customary estate or interest to which she may at any time hereafter become entitled to by common law, custom or otherwise, in the freehold, copyhold, leasehold, and other estates and effects, whether real or personal, of which the said (*husband*) now is, or shall or may at any time or times hereafter during her lifetime be seised, possessed of, or in anywise entitled to.

11. AND the said (*husband*) doth hereby for himself, his heirs, executors and administrators, covenant with the said (*trustees*), their executors, administrators and assigns, that he the said (*husband*), his heirs, executors or administrators, will from time to time pay unto the said (*trustees*), their executors, administrators or assigns, the said annuity or yearly rent-charge of £ , and also such proportionate part thereof as aforesaid, at the days and times hereinbefore appointed for payment thereof, free from all taxes and deductions whatsoever, except the present or any future tax or taxes on property or income.

12. AND ALSO that he the said (*husband*) now hath in himself good right to charge the said messuages, tenements, lands and premises, with the payment of the said annuity or yearly rent-charge of £ , and the powers and remedies for enforcing the payment of the same; and also to demise the same messuages, tenements, lands and premises, with their appurtenances, unto the said (*trustees*), their executors, administrators and assigns, for the said term of 500 years, in manner hereinbefore limited, according to the true intent and meaning of these presents.

13. AND ALSO, that all and singular the said messuages, tenements, lands and premises, shall continue charged with the said annuity or yearly rent-charge of £ , and subject to the distress or distresses, entry and entries of the said (*trustees*), their executors, administrators and assigns, for the recovery of the same; and all costs and expenses to be occasioned by the nonpayment thereof; and shall or may be held, occupied and enjoyed by the said (*trustees*) their executors, administrators and assigns, for the said term of 500 years, in manner aforesaid, according to the true intent and meaning of these presents,

No. II.

*Deed of
Separation
between
Husband and
Wife, the latter
being allowed
to retain her
Wearing
Apparel, &c.*

That premises
shall remain
charged with
annuity.

14. FREELY, CLEARLY AND ABSOLUTELY indemnified, or otherwise, by the said (*husband*), his heirs, executors or administrators, from all charges or incumbrances whatever.

Free from
incumbrances,

15. AND MOREOVER, that the said (*husband*), and all persons rightfully claiming any estate or interest in the said messuages, tenements, lands and premises hereby charged and demised as aforesaid, shall and will, from time to time, and at all times hereafter, at the request of the said (*trustees*), their executors, administrators or assigns, enter into, execute and perfect all such further assurances for the more perfectly or satisfactorily charging the said messuages, tenements, lands and premises with the said annuity or yearly rent-charge of £ , and with such powers and remedies for enforcing the payment thereof as aforesaid; AS ALSO for the more perfectly or satisfactorily assuring and confirming the said messuages, tenements, lands and premises unto the said (*trustees*), their executors, administrators and assigns, for all the then unexpired residue of the said term of 500 years, as also for corroborating and confirming these presents, and every clause, matter and thing herein contained, according to the true intent and meaning hereof, as the said (*trustees*), their executors, administrators or assigns, or their counsel in the law, shall require. [INSERT here covenant from wife's trustees to indemnify husband from the wife's debts; THAT wife shall not institute proceedings to compel husband to cohabit with her, and that wife, on request, will release her right to dower, &c., ut ante, No. I., clauses 9, 10, and 11, pp. 805 to 807.]

For further
assurance.

IN WITNESS, &c.

No. III.

DEED OF SEPARATION BETWEEN HUSBAND AND WIFE, BY WHICH THE WIFE IS PERMITTED TO OCCUPY A LEASEHOLD DWELLING-HOUSE, AND TO HAVE THE USE OF THE FURNITURE DURING HER LIFETIME. STOCK IN THE THREE PER CENT. CONSOLS IS TRANSFERRED INTO THE NAME OF A TRUSTEE, TO BE HELD UPON TRUST TO PAY THE DIVIDENDS TO THE SEPARATE USE OF WIFE FOR LIFE, AND AFTER HER DECEASE, UPON TRUST FOR SUCH PERSONS AS HUSBAND SHALL APPOINT.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of arrangement for separation. 3. Testatum, and declaration of trust of stock. 4. Upon trust to pay dividends to wife for life for her separate use. 5. After decease of wife UPON TRUST for such persons as husband shall appoint. 6. In default of appointment upon trust for husband's next-of-kin. 7. Further testatum by which husband demises premises to trustees. 8. Habendum for residue of term except the last day thereof, if wife shall so long live. 9. Upon trust for wife for life. | <ol style="list-style-type: none"> 10. Third testatum, by which husband assigns household furniture and effects. 11. Habendum. 12. Trust to permit wife to have the use of furniture during her life. 13. Ultimate trust for husband. 14. Covenant from husband to live separate from, and not to molest wife. 11. Covenant from wife's trustee to indemnify husband against wife's debts and claims. 16. Proviso that the receipts of wife and trustee shall be sufficient discharges. 17. Trustee authorized to retain his costs out of trust moneys. |
|--|---|

Parties.

1. THIS INDENTURE, made the day of A.D. 18 ,
BETWEEN (*husband*), of, &c., of the one part, (*wife*), the wife of
the said (*husband*), of the second part, and (*trustee*), of, &c., of the
third part.

2. WHEREAS, in consequence of certain unhappy differences which have arisen and still subsist between the said (*husband*) and (*wife*), they have mutually agreed to live separate and apart from each other; and upon the treaty for such separation, it was agreed that the said (*husband*) should permit the said (*wife*) to occupy his leasehold messuage or dwelling-house hereinafter described, and also to have the use of the household furniture, utensils, and effects therein contained, and which are specified and set forth in the schedule hereunto annexed, during her life; AND it was also further arranged and agreed that the said (*husband*) would transfer the sum of £ Three per cent. Consolidated Annuities into the name of the said trustee, to be held by him upon the trusts hereinafter declared; which said transfer hath been accordingly made, and the said sum of £ Three per cent. Consolidated Annuities is now standing in the name of the said (*trustee*), in the books of the Governor and Company of the Bank of England.

No. III.
Deed of
Separation
between
Husband and
Wife, by which
Wife is
permitted to
occupy a
Leasehold
Dwelling-house,
&c.

Recital of
arrangement for
separation.

3. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement on the part of the said (*husband*), it is hereby declared and agreed by and between the said parties to these presents, that the said (*trustee*), his executors, administrators and assigns, shall stand possessed of the said sum of £ Three per cent. Consolidated Annuities, and the dividends and annual produce thereof, upon the following trusts; (that is to say,)

Testatum and
declaration of
trust of stock.

4. UPON TRUST that he the said (*trustee*), his executors, administrators and assigns, do and shall during the joint lives of the said (*husband*) and (*wife*) receive the dividends of the said sum of £ Three per cent. Consolidated Annuities, when and as the same shall become due, and pay the same to such person or persons as the said (*wife*) shall, notwithstanding her coverture, by any writing under her hand appoint, and in default of such appointment, shall pay the same into the proper hands of the said (*wife*), for her sole and separate use, free from the debts, control, or engagements of the said (*husband*), but so, nevertheless, and in such manner as that she shall have no power to alien or anticipate the growing payments thereof. AND, in case the said (*wife*) shall survive the said (*husband*), then do and shall pay the said dividends of the said sum

Upon trust to
pay dividends to
wife during her
life for her
separate use.

No. III.

*Deed of
Separation
between**Husband and
Wife, by which
Wife is
permitted to
occupy a
Leasehold
Dwelling-house,
&c.**After decease of
wife upon trust
for such persons
as husband
shall appoint.**In default of
appointment
upon trust for
husband's
next-of-kin.*

of £ , Three per cent. Consols, or permit the same to be received by the said (*wife*) and her assigns during the remainder of her life; and after her decease, then as to the said sum of £ , Three per cent. Consolidated Annuities,

5. UPON TRUST for such person or persons, and for such ends, intents and purposes as the said (*husband*) shall, by any deed or instrument in writing, or by his last will or any codicil or codicils thereto, appoint; and in default of such appointment,

6. UPON TRUST for the person or persons who, under the Statute of Distribution of the Personal Estate of Intestates, would, at the time of the decease of the said (*wife*), be entitled to the personal estate of the said (*husband*); and to be divided amongst such persons, if more than one, in the same proportions as the same would be divisible amongst them under the said statute.

*Further testa-
tum by which
husband demises
premises to
trustees.*

7. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance and performance of the said agreement on the part of said (*husband*), and in consideration of the sum of five shillings, paid by the said (*trustee*) to the said (*husband*) on the execution hereof, the receipt of which is hereby acknowledged, HE the said (*husband*) DOTH, by these presents, grant and demise unto the said (*trustee*) ALL, &c. [DESCRIBE *parcels*], [ALL which said premises were, by indenture dated the day of , and made between (*lessor*) of the one part, and (*lessee*) of the other part, demised by the said (*lessor*) unto the said (*lessee*), his executors, administrators and assigns, from thenceforth for an absolute term of ninety-nine years, subject to the rents and covenants therein contained; and all which said premises, by virtue of divers mesne assignments, and other acts and assurances in the law, and ultimately by a certain indenture of assignment dated the day of , made between (*last preceding assignee of term*), of the one part, and the said (*husband*) of the other part, became, and still remains vested in the said (*husband*) for all the unexpired residue of the said term, subject as aforesaid.] AND all the estate, right, title, interest, benefit and right of renewal, property, claim and demand of him the said (*husband*), of, in, to, out of or upon the same premises,

8. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereinbefore described and hereby assigned, with their appurtenances, unto the said (*trustee*), his executors, administrators and assigns, from henceforth for all the unexpired residue of the said term of ninety-nine years, excepting the last day thereof, if the said wife shall so long live, UPON THE TRUSTS hereinafter declared; (that is to say,)

No. III.
Deed of
Separation
between
Husband and
Wife, by which
Wife is
permitted to
occupy a
Leasehold
Dwelling-house
&c.

9. UPON TRUST to permit the said (*wife*), during her life, to occupy the said messuage or dwelling-house and premises; or for the said (*trustee*), his heirs or assigns, to receive the rents and profits thereof, and pay the same into the proper hands of the said (*wife*), during her life, for her sole and separate use, free from the control, debts, or engagements of the said (*husband*), but so nevertheless, and in such manner, as that she shall have no power to alien or anticipate the growing payments thereof.

Habendum for
residue of term
excepting the
last day, if wife
shall so long
live.
Upon trust for
wife for life.

10. AND THIS INDENTURE FURTHER WITNESSETH that, in further pursuance and performance of the said agreement on the part of the said (*husband*), and for the considerations hereinbefore mentioned, HE the said (*husband*), DOTH by these presents assign unto the said (*trustee*) ALL the household goods and furniture, plate, linen, china, glass, books, and effects, and all and singular other the goods, chattels and effects specified and set forth in the schedule hereunto annexed; AND all the right, title, interest and property of him the said (*husband*) therein.

Third testatum
by which
husband assigns
household
furniture
and effects.

11. TO HAVE, HOLD, RECEIVE AND TAKE the said household goods and furniture, plate, linen, china, glass, books, and effects, and all and singular other the premises hereinbefore lastly assigned unto the said (*trustee*), his executors, administrators and assigns, UPON THE FOLLOWING TRUSTS; (that is to say,)

Habendum.

12. UPON TRUST to permit the said (*wife*) to have the free and uninterrupted use and enjoyment of all the said household goods, furniture, plate, linen, china, glass, books and effects during her life, free from the control, debts or engagements of the said (*husband*); but so nevertheless and in such manner as that she shall not be able to let, assign or dispose of the same separate from, or

Trust to permit
wife to have the
use of furniture
during her life.

No. III.

*Deed of
Separation
between
Husband and
Wife, by which
Wife is
permitted to
occupy a
Leasehold
Dwelling-house,
&c.*

except as part of the furniture and effects of the said leasehold messuage or dwelling-house and premises hereby assigned, and so limited, upon trust for the said (*wife*), for the term of her life as aforesaid; and after her decease,

13. UPON TRUST for the said (*husband*), his executors, administrators and assigns absolutely.

Ultimate trust
for husband.
Covenant from
husband to live
separate from
and not molest
wife.

14. AND THIS INDENTURE MOREOVER WITNESSETH that, in further pursuance and performance of the said agreement on the part of the said (*husband*), HE the said (*husband*) DOTH hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said (*trustee*), his executors, administrators and assigns. [INSERT *covenant from husband that wife shall live separate from him; that she may retain her clothes and paraphernalia for her separate use, and dispose of the same as if she was sole; that all real and personal estate acquired by wife during the coverture shall be held and disposed of to her separate use; and that husband will do all necessary acts for confirming settlement, ut ante*, No. I., clauses 3 to 6 inclusive, pp. 802, 803.]

Covenant from
wife's trustee
to indemnify
husband against
wife's debts and
claims.

15. AND THIS INDENTURE LASTLY WITNESSETH, that, in pursuance and performance of the said agreement on the part of the said (*trustee*), HE the said (*trustee*) DOTH hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said (*husband*), his executors, administrators and assigns, [CONTINUE *covenant from trustee to indemnify husband against wife's debts; that wife shall not institute proceedings to compel him to cohabit with her; that wife on request will release her title to dower, ut ante*, No. I., clauses 9, 10, and 11, pp. 805, 806.]

Proviso that
receipts of
wife shall be
sufficient dis-
charges.

16. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED AND AGREED by and between the said parties to these presents, that the receipt or receipts in writing of the said wife for any moneys payable to her in pursuance of any of the trusts herein declared and contained, shall, notwithstanding her coverture, be an effectual discharge for so much money as in such receipt or receipts shall be expressed to have been received; AND ALSO, that the receipt or receipts in writing of the said (*trustee*), his executors, administrators

or assigns, for any moneys payable to him or them in pursuance of any of the trusts herein declared and contained, or otherwise by virtue of these presents, shall be an effectual discharge to the person or persons paying the same; and that any person or persons paying such moneys and taking such receipts from the said wife or the said (*trustee*), his executors, administrators or assigns as aforesaid, shall not afterwards be obliged to see to the application thereof, or be answerable for the misapplication or nonapplication of the same or any part thereof.

No. III.

Deed of
Separation
between
Husband and
Wife, by which
Wife is
permitted to
occupy a
Leasehold
Dwelling-house,
&c.

17. PROVIDED ALSO, AND IT IS HEREBY FURTHER DECLARED AND AGREED, that it shall be lawful for the said (*trustee*), his executors, administrators and assigns, to retain and deduct out of the said trust moneys, or any moneys which shall come into their hands by virtue of these presents, all such sums of money, costs, damages and expenses as he or they shall or may pay, incur, disburse or be put unto, in or about the execution of the trusts herein declared and contained, or in anywise in relation thereto.

Trustee
authorized to
retain his costs
out of trust
moneys.

IN WITNESS, &c.

THE SCHEDULE TO WHICH THE ABOVE-WRITTEN INDENTURE REFERS. [*Here insert the different articles of household furniture, &c.*]

No. IV.

DEED OF SEPARATION BETWEEN HUSBAND AND WIFE, WHERE THE HUSBAND SETTLES A SUM OF MONEY UPON TRUSTS FOR INVESTMENT IN FAVOUR OF HIS WIFE AND CHILDREN, HE BEING INDEMNIFIED AGAINST HER DEBTS, AND ANY CLAIMS SHE MAY MAKE UPON HIM.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of arrangement for separation. 3. That husband has paid trust moneys into the hands of trustees. 4. Testatum. 5. Trust to invest with power to vary securities. 6. Trust to pay dividends to wife so long as she shall support her children, pay her debts, and refrain from molesting husband. | <ol style="list-style-type: none"> 7. In case of her so doing, trustees to apply a sufficient portion of dividends for the purpose of indemnifying husband, and devote the residue for the support of wife and children. 8. Trust after death of husband to pay dividends to wife for the benefit of herself and children. 6. Trust for such persons as husband shall appoint. 10. In case none of the children shall acquire a vested interest. 11. Trusts for husband absolutely. |
|---|--|

Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*husband*) of the first part, (*wife*) of the second part
and (*two trustees*) of the third part.

Recital of
arrangement for
separation.

2. WHEREAS in consequence of certain unhappy differences which have arisen, and still subsist between the said (*husband*) and (*wife*), they have mutually agreed to live separate and apart from each other, and, upon the treaty for the said separation, it was agreed that the said (*husband*) should permit the said wife to have the sole charge and custody of her (*set out number*) children by

him during her life, and that the said (*husband*) should settle the sum of £ , to be held upon the trusts hereinafter declared, for the benefit of the said (*wife*) and her said children in manner hereinafter appearing.

3. AND WHEREAS the said (*husband*), in pursuance of the said hereinbefore recited agreement, hath this day paid into the hands of the said (*trustees*) the said sum of £ .

4. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, it is hereby mutually declared by and between the said parties hereto, that the said (*trustees*) and the survivor of them, his executors or administrators, do and shall stand possessed of the said sum of £ , upon the trusts, and for the ends, intents and purposes hereinafter declared; (that is to say,)

5. UPON TRUST as soon as conveniently may be after the execution of these presents, to lay out and invest the said trust moneys in some of the public stocks or funds, or upon government securities, or by way of mortgage upon the security of freehold, copyhold, or leasehold estates of ample value, which said stocks, funds, and securities, it shall be lawful for the trustees or trustee for the time being of these presents, with the consent of the said (*husband*) during his lifetime, and afterwards at the discretion of the said trustees or trustee, to alter, vary and transpose from time to time as may be deemed expedient, and shall stand possessed of the said trust moneys, stocks, funds, and securities.

6. UPON TRUST to pay the interest, dividends, and annual produce thereof, during the joint lives of the said (*husband*) and (*wife*) into the proper hands of the said (*wife*) for her sole and separate use, free from the control, debts, or engagements of the said (*husband*), so long as she the said (*wife*) shall continue to maintain, clothe, support and educate her said children, suitably to their degree and condition in life, and shall also pay and discharge all such debts, engagements, and liabilities, as she may from time to time, or at any time, incur on her own behalf, or on the behalf of her said children, or any or either of them respectively, and shall

No. IV.

Deed of
Separation
between
Husband and
Wife, where
the Husband
settles a sum
of Money upon
trusts for
investment in
favour of his
Wife and
Children, &c.

That husband
has paid trust
moneys into the
hands of
trustees.
Testatum.

Trust to invest,
with power to
vary securities.

Trust to pay
dividends to
wife so long as
she shall
support her
children, pay
her debts, and
refrain from
molesting
husband.

No. IV.

*Deed of
Separation
between
Husband and
Wife, where
the Husband
settles a sum of
Money upon
trusts for
investment in
favour of his
Wife and
Children, &c.*

In case of her
sodoing, trustees
to apply a
sufficient por-
tion of dividends
for the
purpose of
indemnifying
husband, and to
devote the
residue for the
support of wife
and children.

refrain from molesting the said (*husband*), or instituting any suit or other proceedings for the purpose of compelling him to cohabit with her, or to allow her any support, maintenance, or alimony whatsoever.

7. BUT in case the said (*wife*) shall neglect or refuse to maintain, clothe, support and educate her said children suitably to their degree or condition in life, or to pay all such debts or engagements and liabilities as she may from time to time, or at any time, incur on her own behalf, or on behalf of her said children, or any or either of them respectively, or shall molest the said (*husband*), or institute or prosecute any suit or other proceedings to compel him to cohabit with her, or to allow her any support, maintenance or alimony whatsoever; THEN and in either of such cases, UPON TRUST, during the remainder of the joint lives of the said (*husband*) and (*wife*), to pay and apply the said dividends, interest and annual produce, in the first place, in saving harmless and keeping indemnified the said (*husband*), his executors, administrators and assigns, from all such sums of money, losses, costs, damages and expenses as he or they shall pay or incur in consequence of the said (*wife*) so neglecting, or refusing to maintain, clothe, support and educate her said children, or to pay all such debts, engagements and liabilities as she may incur in her own behalf, or in respect of her said children or any or either of them respectively, as hereinbefore mentioned; or in consequence of her instituting any suit or other proceedings for the purpose of enforcing any claim or demand against him as aforesaid; and, in the next place, in maintaining, clothing, educating and supporting the said (*wife*), and her said children, in such manner as the said (*trustees*) or the survivor of them, his executors or administrators may in their or his discretion think proper. AND, in case the said (*wife*) shall survive the said (*husband*), then,

Trust after
death of
husband to pay
dividends for
the benefit of
herself and
children.

8. UPON TRUST, during the remainder of the life of the said (*wife*), to pay the said interest, dividends and annual produce into the proper hands of the said (*wife*) for the maintenance and support of herself, and the suitable maintenance, clothing, support and education of her said children; and, after the decease of the said

(wife), then as to the said stocks, funds, and securities, and the interest, dividends and annual produce thereof.

No. IV.

Deed of Separation between Husband and Wife, where the Husband settles a sum of Money upon trusts for investment in favour of his Wife and Children, &c.

9. UPON TRUST for such person or persons [CONTINUE *trust in favour of such persons as husband shall by deed or will appoint ut ante*, No. III., clause 5, p. 816. THEN ADD *trusts for benefit of children; provisions for maintenance; and power of advancement, ut ante*, Section II., No. IV., clauses 10, 11 and 12, pp. 704, 705.]

Trusts for such persons as husband shall appoint.

In case none of the children shall acquire a vested interest.

Trust for husband absolutely.

10. AND in case none of the said children, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry; then,

11. UPON TRUST for the said (*husband*), his executors, administrators and assigns, for his and their own absolute use and benefit. [INSERT *covenants from trustees to indemnify husband, ut ante*, No. I., clause 9, 10 and 11, pp. 805, 806; AND ADD *power to change trustees, ut ante*, Section II., No. IV, clause 16, p. 706.]

IN WITNESS, &c.

No. V.

DEED OF SEPARATION BETWEEN HUSBAND AND WIFE, BY WHICH IT IS ARRANGED THAT TWO-THIRDS OF THE DIVIDENDS OF STOCK TO WHICH THEY ARE ENTITLED UNDER THEIR MARRIAGE SETTLEMENT SHALL, DURING THEIR JOINT LIVES, BE PAID TO THE HUSBAND; THE REMAINING THIRD TO BE PAID TO WIFE FOR HER SEPARATE USE.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of marriage settlement. 3. Of agreement to live separate. 4. Testatum, declaring trusts of dividends, &c. 5. As to two equal third parts. 6. Upon trust for husband. 7. As to the remaining one third. 8. Upon trust for the separate use of wife. | <ol style="list-style-type: none"> 9. After decease of either husband or wife, dividends, &c. to be held upon the same trusts as declared by their marriage settlement. 10. Second testatum, by which husband covenants that wife shall live separate from him, &c. 11. Covenant from wife's brother to indemnify husband against wife's debts, or any claims which she may make upon him. |
|--|---|

Parties.

1. THIS INDENTURE made the day of A.D. 18 ,
BETWEEN (*husband*) of, &c. of the first part, (*wife*) of the second
part, (*two trustees*) of the third part, and (*wife's brother*) of the
fourth part.

Recital of
marriage
settlement.

2. WHEREAS by indenture dated the day of , made
between the said (*husband*) of the first part, the said (*wife*) of the
second part, and the said (*trustees*) of the third part (being a settle-
ment made previously to the marriage of the said (*husband*) with
the said (*wife*), which was shortly afterwards duly solemnized), the
capital sum of 7,502*l.*, Three per Cent. Consolidated Annuities,

which had been recently transferred into the names of the said (*trustees*), and is now standing in their names in the books of the Governor and Company of the Bank of England, was settled and assured, immediately after the solemnization of the said intended marriage, UPON TRUST, that the said (*trustees*) and the survivor of them, his executors or administrators, should either continue the said sum of 7,500*l*. Three per cent. Consolidated Annuities in its present state of investment, or sell out and invest the same in some other stocks or funds, or upon government securities, or by way of mortgage, upon freehold, copyhold or leasehold estates, with power to vary securities as therein mentioned, and to stand possessed of the said trust moneys, stocks, funds and securities, UPON TRUST to pay the interest, dividends and annual produce thereof, unto, or permit the same to be received by, the said (*husband*) or his assigns, for the term of his life; and after his decease, UPON TRUST to pay unto, or permit the same to be received by, the said (*wife*) or her assigns, for her life, in case she should happen to survive the said (*husband*), and after the decease of the survivor of them, the said (*husband*) and (*wife*) UPON SEVERAL OTHER TRUSTS, in the now reciting indenture declared and contained.

No. V.

*Deed of
Separation
between
Husband and
Wife, by which
dividends under
Marriage
Settlement
shall be paid to
Husband, &c.*

3. AND WHEREAS in consequence of certain unhappy differences which have arisen, and still exist, between the said (*husband*) and (*wife*), they have mutually agreed to live separate and apart from each other, and upon the treaty for such separation, it was agreed that two-thirds of the said dividends, interest and annual produce should be received by the said (*husband*), and the remaining one-third thereof be paid unto the hands of the said (*wife*), for her sole and separate use in manner hereinafter mentioned.

*Of agreement
to live separate.*

4. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement on the part of the said (*husband*), and in consideration of the covenants hereinafter contained on the part of the said (*wife's brother*), HE the said (*husband*), (with the privity and approbation of the said (*wife*), (*trustees*) and (*wife's brother*)), testified by their being parties hereto), BOTH hereby direct and appoint, and also covenant, declare and agree, with and to the said (*trustees*), their executors, administrators and

*Testatum
declaring trusts
of dividends.*

No. V.

*Deed of
Separation
between
Husband and
Wife, by which
dividends under
Marriage
Settlement
shall be paid to
Husband, &c.*

assigns, that they, the said (*trustees*), their executors, administrators and assigns, shall from henceforth during the remainder of the joint lives of the said (*husband*) and (*wife*), pay and apply the said interest, dividends and annual produce of the said trust moneys, stocks, funds and securities for the time being, in manner following; (that is to say,)

As to two equal
third parts.

5. AS TO, FOR AND CONCERNING two equal third parts or shares thereof,

Upon trust for
husband.

6. UPON TRUST that they the said (*trustees*) and the survivor of them, his executors or administrators, do and shall pay the same unto, or permit the same to be received by, the said (*husband*) or his assigns, for his own use and benefit.

As to remaining
one-third.

7. AND AS TO, FOR AND CONCERNING the remaining other one equal third part or share, of and in the said interest, dividends and annual produce,

Upon trust for
the separate
use of wife.

8. UPON TRUST that they the said (*trustees*), and the survivor of them, his executors or administrators, do and shall pay the same into the proper hands of the said (*wife*) for her sole and separate use, free from the control, debts or engagements of the said (*husband*), but so nevertheless and in such manner as she shall have no power to alien or anticipate the growing payments thereof, her receipts alone being a sufficient discharge for the same; and after the decease of either of them, the said (*husband*) and (*wife*),

After decease of
either husband
or wife dividends
&c., to be held
upon the same
trusts as their
marriage
settlement.

9. UPON SUCH AND THE SAME TRUSTS as, upon the happening of that event, are limited and declared in and by the said hereinbefore in part recited deed of settlement, or as near thereto as the death of parties and other circumstances will then admit of [INSERT proviso that provision for wife shall be in satisfaction of dower and thirds, *ut ante*, No. II., clause 10, p. 812.]

Second testatum
by which
husband
covenants that
wife shall live
separate
from him.

10. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance and performance of the said agreement on the part of the said (*husband*), HE the said (*husband*), doth hereby for himself, his heirs, executors and administrators, covenant with the said

(*wife's brother*), his executors, administrators and assigns, in manner following; (that is to say,) [INSERT COVENANTS from husband that wife shall live separate from him, and possess her clothes and paraphernalia; and also that all after-acquired property shall belong to her, and be at her absolute disposal; and that husband will do all necessary acts for confirming separation deed, ut ante No. I., clauses 2 to 6 inclusive, pp. 802, 803.]

No. V
Deed of
Separation
between
Husband and
Wife, by which
dividends under
Marriage
Settlement
shall be paid to
Husband, &c.

11. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement on the part of the said (*wife's brother*), and for the considerations hereinbefore expressed, HE the said (*wife's brother*), doth hereby for himself, his heirs, executors and administrators, covenant with the said (*husband*), his executors, administrators and assigns, in manner following; (that is to say,) [ADD covenants from wife's brother to indemnify husband against wife's debts, of any claim she may make against him.]

IN WITNESS, &c.

No. VI.

DEED OF SEPARATION BETWEEN HUSBAND AND WIFE, BY WHICH IT IS ARRANGED THAT THE HUSBAND SHALL RECEIVE AN ANNUITY OF £400 DURING THEIR JOINT LIVES, OUT OF THE SETTLED PROPERTY OF THE WIFE, SO LONG AS THEY SHALL JOINTLY LIVE AND HE SHALL CEASE TO MOLEST HER.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital of marriage settlement, by which the wife's real and personal estate are settled to her separate use, with an absolute power of appointment. 3. That husband and wife have agreed to live separate, and that husband is to receive an annual sum. 4. Testatum, by which wife in exercise of the power reserved to her by her marriage settlement, appoints an annuity of 400<i>l.</i> to be paid to husband during the joint lives of himself and wife, provided he performs the covenant entered into by him. | <ol style="list-style-type: none"> 5. Further testatum, by which husband covenants that wife shall live separate from, and enjoy her property unmolested by him. 6. That he will not come to wife's place of residence, or to any place within the distance of ten miles thereof. 7. Proviso for determining annuity on breach of covenant by husband. 8. On breach of covenant husband to pay a specified sum in the nature of liquidated damages. |
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Parties.

1. THIS INDENTURE, made the day of A.D. 185 ,
BETWEEN (*husband*) of &c. of the first part, (*wife*) of the second
part, and (*two trustees*) of the third part.

Recital of
marriage settle.

2. WHEREAS by indenture dated the day of , between

the said (*husband*) of the first part, the said (*wife*) of the second part, and the said (*trustees*) of the third part (being a settlement made previously to, and in contemplation of, a marriage then intended between the said (*husband*) and (*wife*), which was shortly afterwards duly solemnized), certain freehold estates, stocks in the funds, mortgages, securities for money, and other personal estate and effects were conveyed, assigned and assured unto and to the use of the said (*trustees*), their heirs, executors, administrators and assigns, according to the respective natures and qualities of the said premises. AND it was by the now reciting indenture declared that the said (*trustees*), their heirs, executors, administrators and assigns should, immediately after the solemnization of the said intended marriage, during the lifetime of the said (*wife*), pay and apply the rents and profits of the said real estates, and the dividends and annual produce of the said stocks, funds and securities unto or for the benefit of such person or persons, and in such manner as the said (*wife*) should from time to time, or at any time, and notwithstanding her coverture, by any deed or instrument in writing, with or without power of revocation and new appointment, or by her last will, or any codicil or codicils thereto, appoint; and in default of such appointment, to pay the said rents and profits of the said real estate, and the said interest, dividends, and annual produce of the said trust moneys, stocks, and securities, when and as the same shall become due and payable, into the proper hands of the said (*wife*) for and during the term of her life, for her separate use, free from the control, debts, or engagements of the said (*husband*), and after her decease, then as to all and singular the said real estates, and the said trust moneys, stocks, funds and securities, TO THE USE OF, or in trust for such person or persons, and in such manner as the said (*wife*) shall from time to time, or at any time, and notwithstanding her coverture, by any deed or instrument in writing, with or without power of revocation and new appointment, or by her last will, or any codicil or codicils thereto, appoint; and in default of such appointment, UPON TRUST to pay the rents and profits of the said real estate, and the interest, dividends, and annual produce of the said trust moneys, stocks, funds, and securities, unto the said (*husband*) and his assigns, during the term of his natural life, and after his decease, TO THE USE OF, or in trust for the said (*wife*), her heirs, executors, administrators, and assigns, according

No. VI.

*Deed of
Separation
between
Husband and
Wife, by which
Husband shall
receive an
annuity of 400L.
during their
joint lives, &c.*

ment by which
wife's real and
personal estate
are settled to
her separate use,
with an absolute
power of
appointment.

No. VI.

*Deed of
Separation
between**Husband and
Wife, by which
Husband shall
receive an
annuity of 400l.
during their
joint lives, &c.**That husband
and wife have
agreed to live
separate, and
that husband is
to receive an
annual sum.*

to the nature and quality of the said premises, absolutely and for ever.

3. AND WHEREAS certain unhappy differences have arisen, and still exist between the said (*husband*) and (*wife*), in consequence of which they have mutually agreed from henceforth to live separate and apart from each other, and upon the treaty for such separation it was agreed that the said (*wife*) would allow unto the said (*husband*) the annual sum of 400l. to be paid to him out of the rents and profits of the said real estates, interest, dividends, and annual produce of the said trust moneys, stocks, funds and securities, by four equal quarterly payments, upon the terms and conditions hereinafter mentioned.

*Testatum by
which wife in
exercise of the
power reserved
to her by her
marriage settle-
ment, appoints
an annuity of
£400 to be paid
to husband
during the joint
lives of himself
and wife,
provided he
performs the
covenants
entered into by
him.*

4. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement on the part of the said (*wife*), SHE the said (*wife*), in exercise of the power limited to her by the said hereinbefore recited indenture of settlement, DOTH by these presents appoint that the said (*trustees*), the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of the said hereinbefore recited indenture of settlement, do and shall, during the joint lives of the said (*husband*) and (*wife*), out of the rents and profits of the said real estate, or out of the interest, dividends and annual produce of the said trust moneys, stocks, funds and securities, or out of both or either of such funds, and in such proportions and in such manner as the said (*trustees*), or the survivor of them, his executors or administrators, or other the said trustees or trustee for the time being may think proper or expedient, levy and raise the annual sum of 400l., and pay the same from time to time during the joint lives of the said (*husband*) and (*wife*), and so long as he the said (*husband*) shall duly observe, perform, fulfil, and keep the covenants, stipulations and agreements, on his part to be observed, performed, fulfilled and kept, unto the said (*husband*), or his assigns, by four equal quarterly payments, on the 24th day of June, the 29th day of September, the 25th day of December, and the 25th day of March in every year, without deduction, except on account of the present or any future tax on property or income; the first quarterly payment thereof to be made on the 24th day of June now

next ensuing; together with a proportionate part of such annual sum as shall accrue due between the last quarterly day of payment immediately preceding the decease of the said (*husband*), and the day of such decease.

No. VI.

Deed of Separation between Husband and Wife, by which Husband shall receive an annuity of 400l. during their joint lives, &c.

5. AND THIS INDENTURE ALSO WITNESSETH, that in pursuance and performance of the said agreement on the part of the said (*husband*) [CONTINUE covenant from husband that wife shall live separate, and hold and possess her clothes, jewels, and other paraphernalia; that all real and personal estate acquired by the wife during the coverture, shall be held and disposed of as she may think proper, and that husband will enter into all necessary assurances for confirming the settlement, ut ante, No. I., clauses 3 to 6 inclusive, pp. 802, 803.] Further testament, by which husband covenants that wife shall live separate from and enjoy her property unmolested by him.

6. AND ALSO that he the said (*husband*) shall not nor will reside at, or at any time come into (*name of place where wife proposes to reside*), or within the distance of ten miles thereof; or molest or annoy her the said (*wife*) in any way or manner whatsoever. That he will not come to wife's place of residence, or to any place within the distance of ten miles thereof.

7. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED AND AGREED, and particularly the said (*husband*) doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said (*trustees*), their executors, administrators and assigns, that in case he the said (*husband*) shall at any time hereafter infringe upon, or act in any way contrary to all, any or either the covenants and agreements hereinbefore contained on his part to be observed and performed, then and in such case, and immediately thereupon, the said annual sum of 400l. so limited for his benefit shall from thenceforth cease and determine, to all intents and purposes whatsoever. Proviso for determining annuity on breach of covenant by husband.

8. AND ALSO that the said (*husband*) shall and will, immediately upon any one of such breaches of covenant as aforesaid, pay unto the said (*trustees*), their executors, administrators or assigns, the sum of £ sterling, by way of liquidated damages, and not by way of penalty, to be held by the said (*trustees*), their executors, On breach of covenant husband to pay specified sum in nature of liquidated damages.

No. VI. administrators and assigns, IN TRUST for the sole and separate use
Deed of of the said (*wife*), and to be assigned and disposed of in such
Separation manner as she shall, notwithstanding her coverture, by any deed
between or instrument in writing, or by her last will, or any codicil or
Husband and codicils annexed thereto, direct or appoint, in the same manner as
Wife, by which if she was single and unmarried. [INSERT *power to change trustees*
Husband shall with *wife's consent, ut ante*, Section II., No. IV, clause 16, p. 706.]
receive an
annuity of 400l.
during their
joint lives, &c.

IN WITNESS, &c.

No. VII.

DEED OF SETTLEMENT BY WHICH A GENTLEMAN, UPON SEPARATING FROM HIS KEPT MISTRESS, SETTLES AN ANNUITY UPON HER, PAYABLE MONTHLY, SO LONG AS SHE SHALL REMAIN UNMARRIED, UPON CONDITION OF HER QUITTING THE NEIGHBOURHOOD.

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|--|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital that settlor and lady have for some time lived together. 3. That they had agreed to separate, and that settlor will settle an annuity upon her so long as she shall remain single. 4. Testatum, by which settlor demises the premises. 5. Habendum to trustees for ninety-nine years, if annuitant shall so long remain single. | <ol style="list-style-type: none"> 6. Declaration that trustees shall receive annuity by four equal quarterly payments. 7. Declaration that, subject to annuity, trustees are to stand possessed of term in trust for settlor. 8. Declaration of trust of annuity. 9. Trust for lady until marriage or forfeiture. 10. Proviso for determining annuity and for cesser of term. |
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1. THIS INDENTURE, made the day of A.D. 18 , Parties.
BETWEEN (*settlor*) of, &c., of the first part, (*lady*) of, &c., of the
second part, and (*two trustees*) of the third part.

2. WHEREAS the said (*settlor*) and (*lady*) have for some time
lived and cohabited together at and in the town of S—— in the
county of B——.

Recital that
settlor and lady
have for some
time lived
together.

3. AND WHEREAS the said (*settlor*) and (*lady*) have mutually
agreed that all intercourse between them shall from henceforth
cease, and that the said (*lady*) shall leave the town and neigh-

That they had
agreed to
separate, and
that settlor
will settle an

No. VII.

*Deed of
Settlement on
separating from
kept Mistress.*

annuity upon
her so long
as she shall
remain single.

Testatum, by
which settlor
demises the
premises.

bourhood of S—, and not return thereto, nor come within the distance of ten miles thereof; in consideration whereof the said (*settlor*) hath agreed to settle upon her an annuity of 104*l.* during such time as she shall remain unmarried, to be payable to her by monthly payments, and to be secured in manner hereafter mentioned.

4. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and for the considerations aforesaid, and also in consideration of the sum of 5*s.* sterling, paid by the said (*trustee of term*) to the said (*settlor*) on the execution hereof, the receipt whereof is hereby acknowledged; HE the said (*settlor*), DOTH by these presents grant, bargain, sell and demise unto the said (*trustee of term*), ALL [HERE DESCRIBE *parcels.*]

Habendum to
trustees for
ninety-nine
years, if
annuitant
shall so long
remain single.

5. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereby demised, with their appurtenances, unto the said (*trustees*), their executors, administrators and assigns, from henceforth for the term of ninety-nine years, if the said (*lady*) shall so long continue single and unmarried, upon the trusts hereinafter declared; (that is to say,)

Declaration
that trustees
shall receive
annuity by four
equal quarterly
payments.

9. UPON TRUST, and to the intent that the said (*two trustees*) their executors, administrators or assigns, do and shall, during such time as the said (*lady*) shall continue single and unmarried, (*a*) receive one annuity or yearly rent-charge of £ , to be issuing out of and chargeable upon the said hereby demised premises, by four equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, clear of all deductions and abatements whatsoever; the first quarterly payment to be made on the 25th day of March next. AND in case the said (*lady*) shall die on any other day than one of the said quarterly days of payment, a proportional part of the said annuity or rent-charge for so many days as the said (*lady*) shall live of the then current quarter of a year. [IN-

Practical
remarks.

(*a*) That a limitation of annuity during celibacy is good, see *Gibson v. Dickie*, 3 Mau. & Selw. 463.

SERT powers of distress and entry, *ut ante*, No. II., clauses 4 and 5, pp. 809, 810.]

No. VII

*Deed of
Settlement on
separating from
kept Mistress.*

7. AND AS TO, FOR AND CONCERNING the said demised premises, subject to the said annuity or rent-charge, and to the powers and remedies for the recovery and enforcing payment of the same, UPON TRUST for the said (*settlor*), his heirs and assigns, and to attend the inheritance of the same premises.

Declaration
that, subject
to annuity,
trustees are to
stand possessed
of term in trust
for settlor.

8. AND IT IS HEREBY DECLARED AND AGREED, that the said (*trustees*) and the survivor of them, his executors or administrators, or other the trustee or trustees for the time being of these presents, do and shall stand and be possessed of the said annuity or yearly rent-charge of £ , upon and for the trusts, ends, intents and purposes, and with, under and subject to the provisos and agreements hereinafter contained; (that is to say,)

Declaration
of trust of
annuity.

9. UPON TRUST, so long as the said (*lady*) shall continue to remain absent from the town and neighbourhood of S—, and shall not come to within the distance of ten miles from the said town, and until the said (*lady*) shall by letter, or otherwise, molest or annoy the said (*settlor*), or make some demand against or upon him, or until the said (*lady*) shall assign, charge, or otherwise dispose of her interest in the said annuity or yearly rent-charge in the way of anticipation, or attempt or agree so to do, that they the said (*trustees*), or the survivor of them, his executors or administrators, or other the trustee or trustees for the time being of these presents, do and shall, on the first day of every calendar month throughout the year, pay the weekly sum of 2*l.* unto the said (*lady*), for her absolute use and benefit.

Trust for lady
until marriage
or forfeiture.

10. BUT if the said (*lady*) shall at any time return or come to the town or neighbourhood of S— aforesaid, or come to within the distance of ten miles from the said town, or shall by letter or otherwise molest or annoy the said (*obligor*), or make some demand against or upon him, or assign, charge, or otherwise dispose of the said annuity or yearly rent-charge in the way of anticipation, or attempt or agree so to do, then and from thenceforth the said annuity or yearly rent-charge of £ , and all the estate and

Proviso for
determining
annuity, and
for ceasing of
term.

- No. VII. interest of her the said (*lady*) therein, and the said term of ninety-nine years, determinable as aforesaid in the said demised premises, out of which the same annuity or yearly rent-charge is chargeable, shall cease and be void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. [ADD *power to change trustees, ut ante*, Section II., No. I., clause 45, p. 684; ALSO *power to trustees to give receipts, ut ante, ib.* No. III., clause 19, p. 700.]
- Deed of Settlement on separating from kept Mistress.*

No. VIII.

DEED OF SETTLEMENT BY WHICH SETTLOR CONVEYS REAL ESTATE TO TRUSTEES IN FEE, UPON TRUST TO RAISE OUT OF THE RENTS AND PROFITS AN ANNUITY OF £150 FOR A LADY WITH WHOM HE HAS COHABITED, BUT IS NOW ABOUT TO SEPARATE FROM, FOR HER LIFE, AND TO INVEST THE RESIDUE OF THE RENTS AND PROFITS TO ACCUMULATE AT COMPOUND INTEREST DURING HER LIFETIME, AND AFTER HER DECEASE TO SELL THE REAL ESTATE AND DIVIDE THE PROCEEDS, AS ALSO THE INVESTED SURPLUS RENTS, AMONGST THE FOUR NATURAL CHILDREN OF THE SETTLOR BY THE LADY. PROVISO THAT THE ANNUITY SHALL CEASE IN CASE SHE SHALL ATTEMPT TO ANTICIPATE THE GROWING PAYMENTS, AND THAT IN CASE OF HER MARRIAGE THE ANNUITY SHALL BECOME PAYABLE TO HER SEPARATE USE.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Parties. 2. Recital that settlor and lady have for some time cohabited together, and that four natural children have been the result of such intercourse. 3. That settlor and lady have agreed to separate, and that settlor will make a provision for her and her children by him. 4. Testatum, by which settlor conveys a freehold estate to trustees. 5. Habendum to trustees in fee. 6. Upon trust, out of the rents and profits to raise the annual sum of 150<i>l.</i> and pay the same to lady for life, by four equal quarterly payments. | <ol style="list-style-type: none"> 7. Annuity to cease as to lady, and become payable to settlor, on her attempting to anticipate the growing payments; and in case of her marriage, to be settled to her separate use. 8. As to residue of rents and profits, upon trust to invest for the purposes of accumulation. 9. Declaration of trust in favour of children. 10. Power for trustees to invest shares of children before the same shall become transférable. 11. Ultimate trust for the settlor and his next-of-kin |
|---|---|

1. THIS INDENTURE, made the day of A.D. 18 , Parties

No. VIII

*Deed of
Settlement, by
which Settlor
conveys Real
Estate to
Trustees in Fee,
upon trust, &c.*

Recital that
settlor and lady
have for some
time cohabited
together, and
that four natural
children have
been the result
of such
intercourse.

That settlor and
lady have agreed
to separate, and
that settlor
will make a
provision for
her and her
children by him.

Testatum, by
which settlor
conveys a free-
hold estate
to trustees.

BETWEEN (*settlor*), of, &c., of the first part, (*lady*), of, &c., of the second part, and (*two trustees*), of, &c., of the third part.

2. WHEREAS the said (*settlor*) and (*lady*) have for some time lived and cohabited together, and several natural children have been born between them (that is to say), (*A. B.*), (*B. B.*), (*C. B.*) and (*D. B.*), all of whom are now infants under the age of twenty-one years.

3. AND WHEREAS it hath been mutually agreed between the said (*settlor*) and (*lady*) that all intercourse between them shall from henceforth cease, and that the said (*settlor*) shall convey and assure the hereditaments and premises hereinafter described, upon trust for her and her said natural children by the said (*settlor*) in manner hereinafter appearing.

4. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said recited agreement, and in consideration of the sum of 5*s.* to the said (*settlor*) paid by the said (*trustees*) on the execution hereof, the receipt of which is hereby acknowledged, HE the said (*settlor*) DOTH by these presents grant, release and confirm unto the said (*trustees*) and their heirs, ALL, &c. [DESCRIBE *parcels* AND INSERT *general words*.] AND all the estate, right, title and interest of him the said (*settlor*) therein.

Habendum to
trustees in fee.

5. TO HAVE AND TO HOLD the said (*short general description*), and all and singular other the premises hereinbefore described, and hereby granted and released, with their appurtenances, unto and to the use of the said (*trustees*), their heirs and assigns for ever, upon the trusts, and for the ends, intents and purposes hereinafter limited, expressed and declared; (that is to say,)

Upon trust out
of the rents and
profits to raise
the annual sum
of 150*l.*, and
pay the same
to lady for
life by four
equal quarterly
payments.

6. UPON TRUST that the said (*trustees*) and the survivor of them, his executors or administrators, do and shall, out of the rents and profits of the said hereditaments and premises, raise and levy the annual sum of 150*l.*, and until the said (*lady*) shall assign, charge, or otherwise dispose thereof by way of anticipation, or attempt or agree so to do, or do some act, except marriage, whereby, or by reason or means whereof the same, if payable

to herself, would become vested in some other person or persons, do and shall pay such annual sum unto the said (*lady*) for her own proper use and benefit, for and during the term of her natural life, by four equal quarterly payments; on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December; the first quarterly payment to be made on the 25th day of March next.

No. VIII.

Deed of Settlement, by which Settlor conveys Real Estate to Trustees in fee upon trust, &c.

7. BUT if the said (*lady*) shall assign, charge or otherwise dispose of the said annuity by way of anticipation, or attempt or agree so to do, or do any act, except marriage, whereby or by reason or means whereof, the same annuity, if payable to herself, would become payable to any other person or persons, THEN UPON TRUST to pay such annuity unto the said (*settlor*), his heirs and assigns, during the remainder of the natural life of the said (*lady*), or unto such person or persons or in such manner as the said (*settlor*) shall direct or appoint; BUT in case the said (*lady*) shall happen to marry, then and in such case the said annuity shall be paid to her for her sole and separate use, free from the debts, control or engagements of her husband; and so that she shall have no power to anticipate the growing payments thereof, her receipt or receipts in writing being alone a sufficient discharge for such annuity, or of such part or parts thereof as in such receipt or receipts shall be expressed to be received.

Annuity to cease as to *lady*, and become payable to settlor on her attempting to anticipate the growing payments; and in case of her marriage, to be settled to her separate use.

8. AND as to the residue of the said rents and profits, UPON TRUST that the said (*trustees*) or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, do and shall, during the remainder of the natural life of the said (*lady*), lay out and invest the same in the Bank of England, or in government securities, or in some of the public stocks or funds, or upon mortgage on good and sufficient freehold, leasehold or copyhold estates in England or Wales, but not in Ireland, in the names of them the said (*trustees*) or the survivor of them, his executors or administrators, or other the said trustees or trustee of these presents, and do and shall from time to time alter, vary and transpose the same, as occasion shall require; and do and shall receive the interest, dividends and annual produce of the said trust moneys, stocks, funds and securities, and lay out

As to residue of rents and profit upon trust to invest for the purposes of accumulation.

No VIII.

*Deed of
Settlement, by
which Settlor
conveys Real
Estate to
Trustee in Fee
upon trust, &c.*

and invest the same in like manner, so that the same may accumulate in the nature of compound interest. AND do and shall stand and be possessed thereof, upon the trusts hereinafter declared of and concerning the same. AND after the decease of the said (*lady*), [INSERT HERE *trusts to sell real estate, ut ante*, Section III., No. VI., clause 8, p. 793.]

Declaration of
trust in favour
of children.

9. AND IT IS HEREBY DECLARED, that the said (*trustees*) and the survivor of them, his executors and administrators, or other the trustee or trustees for the time being of these presents, do and shall stand and be possessed of the moneys to arise from such sale or sales as aforesaid, as also of the said stocks, funds and securities so directed to accumulate as aforesaid. [INSERT *similar trusts in favour of settlor's natural children, as also provisions for survivorship and accruer, as are contained, ut ante*, Section III., No. VI., clauses 13, 14, pp. 795, 796.]

Power for
trustees to
invest shares
of children
before the same
shall become
transferable.

10. PROVIDED ALWAYS, AND IT IS HERBY DECLARED AND AGREED, that it shall be lawful for the said (*trustees*) and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, at any time after the exercise of the aforesaid trusts of sale, and before all, any or either of the respective shares of the said children shall become so payable or transferable as aforesaid, to lay out and invest so much of the said trust moneys upon such or the like securities, and with such and the like powers of varying the same, as are hereinbefore mentioned of and concerning the residue of the rents and profits of the said hereditaments and premises after payment and satisfaction of the aforesaid annuity.

Ultimate trust
for the settlor
and his next-
of-kin.

11. PROVIDED ALSO, AND IT IS HEREBY FURTHER DECLARED AND AGREED, that if all of the said children shall die before the shares hereby respectively intended for them shall become payable or transferable, THEN and in such case the said (*trustees*) or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, do and shall stand and be possessed of the said hereditaments and premises, or of the trust moneys, stocks, funds or securities, in or upon

which the same may be invested, UPON TRUST for the said (*settlor*), his executors, administrators and assigns, as part of his personal estate, and to be distributable accordingly. [ADD clause of indemnity to purchasers, *ut ante*, No. III., clause 19, p. 700. ALSO power to change trustees, *ut ante*, No. IV., clause 16, p. 702.]

No. VIII.
Deed of Settlement, by which Settlor conveys Real Estate to Trustees in Fee, upon trust, &c.

IN WITNESS, &c.

No. IX.

BOND GIVEN TO TRUSTEES TO SECURE AN ANNUITY TO A KEPT MISTRESS, UPON A SEPARATION (a), SO LONG AS SHE SHALL REMAIN SINGLE, AND SHALL ABSENT HERSELF FROM THE NEIGHBOURHOOD OF THE OBLIGOR'S RESIDENCE, AND SHALL NOT ATTEMPT TO ANTICIPATE THE GROWING PAYMENTS OF THE ANNUITY. (*)

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Bond. 2. Condition for avoiding bond on payment of annuity to trustees by four equal quarterly payments. 3. Declaration that trustees shall stand possessed of annuity. | <ol style="list-style-type: none"> 4. Upon trust to pay annuity to lady so long as she shall remain single, and shall absent herself from the town and neighbourhood, and shall not attempt to anticipate the growing payments of the annuity. |
|--|---|

Obligation.

1. KNOW ALL MEN BY THESE PRESENTS, that I

Bonds given to a kept mistress.

(a) In the case of bonds given to a kept mistress, a distinction has been taken as to whether such bonds were given in consideration of future or past

Stat. 55 Geo. 3, c. 184.

(*) By the statute 55 Geo. 3, c. 184, bonds given as a security for the payment of an annuity (except upon the original creation and sale thereof), for any definite term, so that the total amount to be paid can be previously ascertained, were chargeable with the same duty as on a bond of the like nature. And when given as a security for the payment of any annuity (except as aforesaid), or of any sums of money, except at stated periods, for the term of life or other definite period, so that the whole of the money cannot be previously ascertained, such bonds were charged with an *ad valorem* duty commencing at 1*l.* where the annuity did not amount to 25*l.*, and increasing to 25*l.* where such annuity amounted to 2,000*l.* or upwards. But now, under the new Stamp Act (13 & 14 Vict. c. 97, schedule Bond), a bond in England or Ireland, and personal bond in Scotland, given for the security of any annuity (except as aforesaid), or of any sum or sums of money at stated periods (not being interest for any principal sum, nor rent reserved or payable upon any lease or tack,) for the term of life, or any other indefinite period, so that the whole money cannot be previously ascertained, where the annuity shall not exceed 50*l.* per annum, shall be chargeable with a duty of 1*l.*; and where the same shall exceed 50*l.*, but shall not exceed 100*l.* per annum, a duty of 2*l.*; and where the same shall exceed 100*l.*, then for every 100*l.* per annum, and also for every fractional part of 100*l.* per annum, a further duty of 2*l.*

Stat. 13 & 14 Vict. c. 97.

(obligor), of, &c., am held and firmly bound to (obligees for lady), of, &c., in the penal sum of 5,000*l.*, to be paid to the said

No. IX.

Bond given to Trustees to secure an Annuity of 104*l.* a Year to a kept Mistress upon a Separation.

cohabitation. If given in consideration of future cohabitation, such assurance^a have always been considered as invalid, being *contra bonos mores*, and holding out an inducement to crime: (1 Roll. Abr. 687, pl. 6; *Walker v. Perkins*, 1 W. Black. 517; S. C., 3 Bur. 1568; *James v. Hoskin*, 1 Tidd Pract. 593; *Friend v. Harrison*, 2 Car. & Pay. 584; *Rez v. Northwingsfield*, 1 B. & Ad. 912; 1 Selw. N. P. 468.) But when given in consideration of past cohabitation, the transaction is viewed in a totally different light; for in the latter case, so far from holding out an inducement to crime, it affords the erring female the means of leading a more virtuous life: (*Turner v. Vaughan*, 2 Wils. 339.) The conduct of a woman, however abandoned, will not invalidate a bond given for past cohabitation (*Hill v. Spencer*, Ambl. 641); nor will even the circumstance of her having had a criminal connexion with another man after she was taken in keeping avoid the security: (*ib.*) A different doctrine seemed at one time to have prevailed in equity, where, if it had been charged in a bill that the defendant was a common prostitute, and had drawn on the obligor to give the security, the court would have relieved against it: (*Whaley v. Norton*, 1 Vern. 484.) Still, it appears that in most of these cases the ground of relief was founded upon the circumstance of the securities having been given previously to the cohabitation, which, being a consideration of a criminal nature the court was bound to relieve against; and however severely courts of equity might formerly have looked upon securities of this kind, they have latterly refused to relieve an obligor against a bond given for past cohabitation, on the ground already stated, that such a provision enables a woman in such an unfortunate situation to lead a life more conducive to her happiness, and to public morality: (*Bainham v. Manning*, 2 Vern. 242; *Gray v. Mathias*, 5 Ves. 286.) Courts of equity also formerly, even in cases where they would not relieve the obligor himself, would have afforded this relief to his representatives (*Matheus v. Hunbury*, 2 Vern. 187; *Bainham v. Manning*, 2 Vern. 242; *Bodley v. —*, 19 Vin. Abr. 301 E.; S. C. 2 Cha. Cas. 15), but it does not seem that this distinction would now be recognised, and that where relief would be refused to the party himself, it would not be afforded at the request of his representatives, however far the court, under the circumstances of the case, might refuse to assist the woman claiming under the bond. And it seems that equity will in no case relieve the obligor on his own application: (*Spicer v. Hayward*, Pre. Cha. 114.)

Distinction between bond given in consideration of future and past cohabitation.

But although courts of equity will not relieve the obligor on his own application, they would not formerly have lent their aid to enforce the securities where the consideration was for past cohabitation with a married man, and the woman herself was aware of that fact (*Priest v. Parrot*, 2 Ves. 160), although it was otherwise where she was unaware of the circumstance of the man being married (*Annandale v. Harris*, 2 P. Wms. 432; 3 Bro. P. C. 443; and see *Ord v. Blackett* and *Carew v. Stafford*, cited in *Annandale v. Harris*, *sup.*, and see 1 Eq. Ca. Abr. 31; 3 Swanst. 427); but in a recent case in which the question arose, the Vice-Chancellor sent a case to the Court of King's Bench to inquire whether the circumstance of the defendant being a married man was a good defence at law to an action on such a bond, when that court certified that it was not a good defence; so that the distinction above stated may be considered as exploded: (*Nyne v. Mosley*, 6 B. & C. 133; 9 D. & Ry. 165; 2 Sim. 161.)

Whether equity will refuse to assist the woman on the ground of the obligor being a married man.

And in all cases where any fraud has been practised upon the woman, equity will relieve her. As, in a case where a man, having debauched a young female, and, intending afterwards to deceive her, made a settlement upon her of 30*l.* a year for life out of an estate not belonging to him, the court decreed him to make it good out of an estate which was his own property, and this decree was afterwards affirmed upon appeal to the House of Lords: (*Carew v. Stafford*,

Where fraud has been practised upon the woman, equity will relieve her.

No. IX.

Bond given to Trustees to secure an Annuity of 104l. a Year to a kept Mistress upon a Separation.

(*obligees*), or their certain attorney, executors, administrators or assigns, for which payment to be well and truly made I hereby bind myself, my heirs, (*b*) executors and administrators, and every of them, firmly by these presents. [INSERT *recitals of obligor and the lady having lived together, and their mutual agreement to separate, and that the obligor has agreed to settle an annuity upon her during*

1 Eq. Ca. Abr. 427.) So, where Sir W. B., having seduced Mrs. Ord, then a young lady of about fourteen years of age, of a good family, and entitled to 12,000*l.* fortune, settled on her 360*l.* *per annum* for years; but the estate was incumbered, and Mrs. Ord dying, her administrator brought a bill in order to disencumber the land, which was charged with the annuity, and was relieved accordingly: (*Ord v. Bluckett*, cited in *Annandale v. Harris*, 1 Eq. Ca. Abr. 87, pl. 6; 2 P. Wms. 433; 19 Vin. Abr. 903, pl. 2.)

Equity will not decree a specific performance of a voluntary promise by letter.

But equity will not decree a specific performance of a voluntary promise by letter in favour of a woman seduced (*Kyne v. Moore*, 1 Sim. & Stu. 61), for the promise being voluntary, is insufficient to found a bill upon for its performance.

Whether past cohabitation will afford a sufficient consideration to support an action of *assumpsit*.

Whether past cohabitation will afford a sufficient consideration to support an action of *assumpsit*, does not appear to be satisfactorily determined. In *Bennington v. Wallis* (4 B. & Ald. 650), it was held that past cohabitation alone, or the ceasing to cohabit in future, was not a sufficient consideration; but at the same time the court expressed an opinion that if it had been alleged the defendant was the seducer, the promise might have been supported. And in another case (*Gibson v. Dickie*, 3 Mau. & Selw. 463) where *assumpsit* was brought upon an agreement by the defendant to allow the plaintiff with whom he cohabited, an annuity in case they should separate, provided she should continue single, the chief objection seems there to have been, not as to the validity of the consideration, but as to whether the condition to live single could be recognised; but it seems that the consideration is insufficient, and it is clearly settled that a court of equity will not compel the party or his executors to fulfil any executory agreement to provide for a forsaken kept mistress (*Whaley v. Norton*, 1 Vern. 483; *Mathevs v. L——e*, 1 Mad. 558), unless, as in the cases previously alluded to, some fraud has been practised upon her relative to the nature of the security.

Bonds of the above kind being voluntary, the payment of them will be postponed in favour of creditors, but not of legatees.

Bonds of this kind being purely voluntary, equity will postpone the payment of them out of the personal estate until all the other creditors, as well those by simple contract as by specialty, are fully satisfied; but if the personal estate proves insufficient, then such bonds must be paid out of the real estate, if there be any: (*Jones v. Powell*, 1 Eq. Ca. Abr. 84, pl. 2; *Gray v. Rooke*, Ca. temp. Talb. 133; *Harris v. Annandale*, *sup.*; *Robinson v. Gee*, 1 Ves. 254.) And bonds of this kind will be entitled to priority in payment to legacies, for in the former instance the right is transferred in the obligor's lifetime, whereas in the case of such legacies, such right does not accrue until his death, and as both species of gifts are voluntary, so, according to the long-established maxim, "*qui prior est tempore, potior est jure*," the right which does not arise until the testator's death must be postponed to a right created in his lifetime: (*Fairefeard v. Bowers*, 2 Vern. 202; S. C., Pre. Cha. 17; *Jones v. Powell*, 1 Eq. Ca. Abr. 143, pl. 15.)

Heirs of obligor not bound unless named.

(*b*) The heirs of obligor will not be bound unless expressly named) *Barber v. Foz*, 2 Saund. 136; *Gifford v. Manley*, Ca. temp. Talb. 109; 3 Bac. Abr. 458; but it is otherwise with respect to the personal representatives, who are equally bound, whether named or not: (*Dy. 14*, pl. 69; 2 Wms. Saund. 137; *Noy. Max. 105.*)

such time as she should continue unmarried, *ut ante*, No. VII., clauses 2, 3, pp. 833, 834.]

No. IX.

2. NOW THE CONDITION of the above-written obligation is, that if the above bounden (*obligor*), his executors or administrators, do and shall, during such time as the said (*lady*) shall continue single and unmarried, well and truly pay or cause to be paid unto the said (*obligees*), or the survivor of them, his executors, administrators or assigns, one annual sum of £ sterling, clear of all deductions and abatements whatsoever, by four equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, and shall make the first quarterly payment thereof on the 25th day of March next; AND in case the said (*lady*) shall die on any other day than one of the said quarterly days of payment, a proportional part of the said annual sum to be paid for so many days as the said (*lady*) shall live of the then current quarter of a year; THEN and in such case the said bond to be void, otherwise continue in full force and virtue.

Bond given to Trustees to secure an Annuity of 104l. a Year to a kept Mistress upon a Separation.

Condition for avoiding bond on payment of annuity to trustees by four equal quarterly payments.

3. AND IT IS HEREBY DECLARED AND AGREED, by and between the said (*obligor*), (*lady*) and (*obligees*), that the said (*obligees*) and the survivor of them, his executors, administrators and assigns, do and shall stand possessed of the said annual sum of £ , upon the trusts, and for the ends, intents and purposes, and subject to the provisos, declarations and agreements hereinafter contained; (that is to say,)

Declaration that trustees shall stand possessed of annuity.

4. UPON TRUST, so long as the said (*lady*) shall continue single and unmarried, and shall remain absent from the said town and neighbourhood of S—, and shall not come to within the distance of ten miles from the said town, or until the said (*lady*) shall by letter or otherwise molest or annoy the said (*obligor*), or make some demand against or upon him, or until she shall assign, charge, or otherwise dispose of her interest in the said annuity in the way of anticipation, or attempt or agree so to do, to pay the said annual sum of £ as and when the same shall become payable into the proper hands of her the said (*lady*.) BUT if the said (*lady*) shall return or come to the town or neighbourhood of

Upon trust to pay annuity to lady so long as she shall remain single &c.

No. IX.

*Bond given to
Trustees to
secure an
Annuity of
104l. a Year to
a kept Mistress,
upon a
Separation.*

S— aforesaid, or come to within the distance of ten miles of the said town, or shall by letter or otherwise molest or annoy the said (*obligor*), or make some demand against or upon him, or shall assign, charge or otherwise dispose of the said annuity in the way of anticipation, THEN, and from thenceforth, the said annuity and the above bond shall become void to all intents and purposes whatsoever, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

No. X.

FORM OF A BOND GIVEN TO A KEPT MISTRESS ON SEPARATION, TO SECURE TO HER AN ANNUITY OF £100, PAYABLE QUARTERLY, AND IN CASE OF HER MARRIAGE TO BE TO HER SEPARATE USE, AND TO CEASE IN CASE OF HER ATTEMPTING TO ANTICIPATE THE GROWING PAYMENTS. (a)

- | | |
|---|--|
| 1. Recital of obligor and lady having cohabited together. | 4. Declaration that in case lady shall marry, the annuity shall be paid to her separate use. |
| 2. Of agreement to separate. | 5. Proviso for avoiding annuity in case of anticipation by the lady of the growing payments. |
| 3. Condition. | |
-

[INSERT *obligation, as in last precedent.*]

1. WHEREAS (*obligor, the gentleman*), and (*obligee, the lady*),
have for some time cohabited together.

Recital of
obligor and
lady having
cohabited
together.

2. AND WHEREAS the said (*obligor*) and (*lady*) have agreed to
break off all intercourse between them, and from henceforth to
live separate and apart from each other, and the said (*obligor*) hath
agreed to settle an annuity of 100*l.* upon her for her future
support and maintenance during the remainder of her life.

Of agreement
to separate.

3. NOW THE CONDITION of the above-written bond is, that
if the said (*obligor*), his executors or administrators, do and shall
well and truly pay or cause to be paid unto the said (*obligee*) one
annuity or yearly sum of 100*l.* sterling, by four equal quarterly

Condition.

(a) See observations upon the New Stamp Act, *ante*, p. 824, note.

No. X.

*Form of a Bond
given to a
kept Mistress
to secure to her
an Annuity
of 100l.*

payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, during the lifetime of the said (*lady*), without deduction, or until she shall charge, or otherwise dispose of her interest in the said annuity in the way of anticipation, or attempt or agree so to do, or shall commit or do any act, except marriage, whereby or by reason or means whereof the same annuity would become payable to any other person or persons; AND in case the said (*obligor*) do and shall make the first quarterly payment of the said annuity on the 25th day of March next, THEN and in such case the above-written bond to be void, otherwise to continue in full force and virtue.

Declaration
that in case
lady shall
marry, the
annuity shall
be paid to her
separate use.

4. AND IT IS HEREBY EXPRESSLY DECLARED by the said (*obligor*), that in case the said (*lady*) shall happen to marry, then the said annuity shall, so long as the said annuity shall remain payable, be to her sole and separate use, free from the debts, control or engagements of her husband, and so that she shall have no power to anticipate the growing payments thereof, her receipt or receipts in writing, notwithstanding her coverture, being alone a sufficient discharge for the said annuity, or such part or parts thereof as in such receipt or receipts shall be expressed to be received.

Proviso for
avoiding annuity
in case of
anticipation by
the lady of the
growing
payments.

5. PROVIDED ALWAYS, AND IT IS HEREBY FURTHER DECLARED AND AGREED, that if the said (*lady*) shall charge, or otherwise dispose of her interest in the said annuity in the way of anticipation, or attempt or agree so to do, or commit or do any act, except marriage, whereby or by reason or means whereof the said annuity would become payable to any other person or persons, THEN and from thenceforth, the said annuity of 100l., and the above-written bond, shall cease and become void to all intents and purposes whatsoever.

STAMP DUTIES ON SETTLEMENTS.

No *ad valorem* duties were chargeable upon settlements previously to the General Stamp Act (55 Geo. 3, c. 184), by which a duty was imposed commencing at 1*l.* 15*s.* on the settlement of any money or stock not exceeding 100*l.* and not amounting to 1,000*l.*, and gradually increasing to 25*l.* The new duty is at the rate of 5*s.* upon every 100*l.*, and is, therefore, a considerable increase upon sums exceeding 700*l.*, whilst upon sums below that amount there is, as there ought to have been long before, a reduction of the duty which is now assessed upon a fairly graduated scale.

Institution of
ad valorem
duties upon
settlements.

The following is the Comparative Table of the Old and New Duties upon Settlements:—

SETTLEMENT OF ANY SUM OF MONEY OR STOCK.

	£		£	Old Duty.	New Duty.
				£ s. d.	
Not exceeding	100	Not amounting to	1,000	1 15 0	5 <i>s.</i> for every 100 <i>l.</i> and for any fractional part of 100 <i>l.</i>
Amounting to	1,000		2,000	2 0 0	
"	2,000		3,000	3 0 0	
"	3,000		4,000	4 0 0	
"	4,000		5,000	5 0 0	
"	5,000		7,000	7 0 0	
"	7,000		9,000	9 0 0	
"	9,000		12,000	12 0 0	
"	12,000		15,000	15 0 0	
"	15,000		20,000	20 0 0	
"	20,000			25 0 0	
And for any Duplicate of the Deed of Settlement.....				The same duty as on the original deed.	•

* Policies of assurance when the subject-matter of a settlement, do not require an *ad valorem* stamp, and therefore a 1*l.* 15*s.* stamp will be sufficient without any reference as to the amount of the sum assured: (*Sainville v. Commissioners of Inland Revenue*, 23 L. R. 126; see also *Lopez v. De Tastett*, 8 Taunt. 712; *Hughes v. King*, 1 Stark. 119; *Annandale v. Pattison*, 9 B. & C. 119.)

And all deeds or instruments chargeable with the said *ad valorem* duty which shall also contain any settlement of land or other property, or contain any other matter or thing besides the settlement, or such money or stock, shall be chargeable with such further stamp duty as any separate deed or instrument containing such settlement of lands or other property, or other matter or thing would have been chargeable with, exclusive of the progressive duty.

Where the
instrument con-
tains any other
matter besides
the settlement.

And where there shall be more than one such deed or instrument

Where there
shall be more

*Practical
Observations
on the Stamp
Laws relating
to Settlements.*

than one deed
or instrument.

Where the
settlement is of
real estate.

Where any
definite or
certain sum of
money or stock
shall be settled.

As to voluntary
settlements.

Separation deed.

for effecting any such settlement as aforesaid, chargeable with any such duty or duties exceeding 1*l.* 15*s.*, one of them only shall be charged with the said *ad valorem* duty; and also where any settlement shall be made in pursuance of any previous articles chargeable with, and which shall have paid any such duty or duties exceeding 1*l.* 15*s.*, such last-mentioned settlement shall not be chargeable with the said *ad valorem* duty; and the said deeds and instruments respectively not chargeable with the said *ad valorem* duty shall be liable under any more general description in this schedule or in the said schedule annexed to the said act of 55 Geo. 3, c. 184; on the whole being produced duly executed and duly stamped, as hereby required, the latter shall also be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty.

Where real or personal estate, not consisting of money or stock, is settled, the assurance will fall within the denomination of deed not otherwise provided for, and as such will be liable to the 1*l.* 15*s.* common deed stamp duty. It seems, however, that if a deed of settlement contains a trust to raise any specific sum of money, an *ad valorem* duty upon settlements to that amount will attach, for it then becomes a specific charge upon the lands within the express words contained in the schedules annexed as well to the new as to the old General Stamp Act, under the head "SETTLEMENT."

"Any deed or instrument, whether voluntary or gratuitous, or upon any good or valuable consideration other than a *bonâ fide* pecuniary consideration, whereby any definite and certain principal sum or sums of money (whether charged or chargeable upon any lands, or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects, or not), or any definite and certain share or shares in any of the Government or Parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, or of any other company or corporation, shall be settled, or agreed to be settled upon or for the benefit of any person or persons, either in possession or reversion, either absolutely, or for life or other partial interest, or in any other manner whatsoever," and which now, under the new Stamp Act, where the sum of money, or the value of the share &c. agreed to be settled shall not exceed 100*l.*, a duty of 5*s.*, and so for every further 100*l.* and fractional part of 100*l.*, a like duty of 5*s.*

The same duty will attach upon a voluntary settlement, as if made upon good or valuable consideration, voluntary settlements being within the express words of the schedule annexed to both the acts.

A deed of separation falls within the head of "Deeds not otherwise charged," unless provision be made out of a specific sum of money or stock thereby settled, in which latter case the stamp duty on a settlement will attach: (Cov. on Stamps, 522.)

LONDON :

PRINTED BY JOHN CROCKFORD, 29, ESSEX STREET,
STRAND.

Law
Eng
H894c

258171

Author Hughes, William

Title Concise precedents in modern conveyancing.
Ed. 2. Vol. 1.

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